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A comprehensive compilation of decisions, reports, public notices and other documents of the Federal Communications Commission of the United States.

FEDERAL COMMUNICATIONS COMMISSION

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Federal Communications Commission Record

Volume 5
Issue 15

Table of Contents

Table of Cases..... i

Table of FCC and Delegated Authority Numbers..... iv

Table of Docket Numbers..... vi

Table of Rulemakings Numbers..... vii

Table of Localities..... viii

Table by Subject Matter..... ix

Table by Statutory and Rule Provisions..... xiii

Decisions, Reports, Memorandum Opinions, Orders, and Other Selected Material..... 4381

Federal Communications Commission Record

Table of Cases
Volume 5
Issue 15

Case Name	Page
AT&T Communications	4581
AT&T Communications, Inc.	4678
Accounting for Inside Wiring Services	4549
Allnet Communication Services, Inc.	4527
Amendment of Part 1 - Anti-Drug Abuse Act of 1988	4500
Amendment of Part 87 - Remote Communications Outlet	4550
Amendment of Part 87 - Aeronautical Utility Mobile Stations	4653
Amendment of Parts 2 and 25 - Satellite/Terrestrial Broadcasting	4650
Amendment of Parts 0, 1, and 64 - Del. Auth., Corrections/Deletions	4601
Amendment of Section 22.521(b) - Air-Ground Stations	4599
Amendment of Section 94.65(e) - Rechannelization of Frequency Band	4655
American Telephone and Telegraph Company	4618
American Telephone and Telegraph Company	4579
American Telephone and Telegraph Company	4673
American Telephone and Telegraph Company	4676
American Telephone and Telegraph Company	4677
American Telephone and Telegraph Company	4589
Automated Reporting Requirements	4718
Bell Operating Companies	4714
Bobier Electronics, Inc. v. Capitol Radiotelephone Co.	4672
Brewies, Wayne	4643
Butler, Robert J. Esq.	4547
Citizens Utilities Company	4584
Common Carrier Bureau - Consumer Education Program	4680
Competition in the Interstate Interexchange Marketplace	4668
Computer III Remand Proceedings	4708
Conference-Call USA, Inc.	4526
Contact Express, Inc.	4575
Contel of the West	4570
Cook Telecom Inc., of San Francisco	4530
Deletion of Part 99 - Disaster Communications Service	4520
Delta Telephone Company	4525
Fee Decisions of the Managing Director	4591
GTE Southwest	4629
GTE Telephone Companies	4573
Georgia Public Telecommunications Commission	4560
Goodlettsville Broadcasting Company, Inc.	4593
Groundwave Propagation in the AM Broadcast Band	4489
Height and Power Increases - Public Mobile Service	4604

Case Name	Page
Hughes Communications Galaxy, Inc.	4497
Hughes Communications Galaxy, Inc.	4499
Interference Reduction Between AM Broadcast Stations	4492
J. T. Parker Broadcasting Corp.	4651
LDDS Communications, Inc.	4662
Lankford, S. Kent	4522
Lar-Tex Cellular Telephone Company, Inc.	4711
Local Exchange Carriers - Cost Allocation Manual Revisions	4646
Low Earth Orbit Satellite Application	4660
Low Earth Orbit Satellite Application (ERRATUM)	4661
MCI Telecommunications Corporation	4566
MCI Telecommunications Corporation	4567
MCI Telecommunications Corporation	4569
MCI Telecommunications Corporation	4580
MCI Telecommunications Corporation	4666
MCI Telecommunications Corporation	4667
Mallery, Peggie Post	4543
Mid-Ohio Communications, Inc.	4596
Midyear 1986 Access Tariff Filings	4592
Mobley, Arthur Andrew	4521
Modesto Broadcast Group	4674
New York and New England Telephone and Telegraph Company	4586
Operator Service Providers	4630
Paramount Communications, Inc.	4627
Petition to Amend Part 87 for Coordination of Air Show Events	4641
Phalen, Shawn	4669
Port Huron Family Radio, Inc.	4562
Prime Cable of Austin, Texas	4590
Pyramid Broadcasting, Inc.	4523
Reorganization/Deregulation of Part 97 - Amateur Radio Service	4614
Review of Sections 68.104 and 68.213 - Inside Wiring	4686
Skywave Propagation in the AM Broadcast Band	4482
Smyrna Broadcasting Corporation	4545
St. Croix Wireless Co.	4564
St. Louis Electronics Communications Corp.	4528
Stuart Gaines Broadcasting Corporation	4587
TRAC Communications, Inc. v. Detroit Cellular Telephone Company	4647
TRT/FTC Communications, Inc.	4664
Table of Allotments, FM, Arcadia, Goulds and Immokalee, FL	4540
Table of Allotments, FM, Canton, MO	4557
Table of Allotments, FM, Coahoma, TX	4683
Table of Allotments, FM, Columbus, NE	4539
Table of Allotments, FM, De Witt and England, AR	4554

Case Name	Page
Table of Allotments, FM, Greenwood, MS	4681
Table of Allotments, FM, Mora, NM	4534
Table of Allotments, FM, Mount Vernon, MO	4682
Table of Allotments, FM, Orangeburg, SC	4536
Table of Allotments, FM, Ottumwa, IA	4685
Table of Allotments, FM, Stuart and Boone, IA	4537
Table of Allotments, FM, Sweet Home, OR	4532
Table of Allotments, FM, Twin Lakes, IA	4556
Table of Allotments, FM, Weed and Mount Shasta, CA	4558
Technical Assignment Criteria for the AM Broadcast Service	4381
TeleDial America, Inc.	4663
U.S. Cellular, Inc.	4577
US Sprint Communications Company Limited Partnership	4568
Victorson Group, Inc.	4506
Waiver of Section 97.501	4553
Webster-Fuller Communications Associates	4518
Yavapai Telephone Exchange	4625

Federal Communications Commission Record

Table of Cases by Delegated Authority and FCC Number
Volume 5
Issue 15

Delegated Authority or FCC Number	Page	Delegated Authority or FCC Number	Page
DA 90 - 861	4591	DA 90 - 952	4618
DA 90 - 901	4521	DA 90 - 953	4586
DA 90 - 902	4543	DA 90 - 954	4580
DA 90 - 903	4522	DA 90 - 955	4581
DA 90 - 904	4523	DA 90 - 956	4668
DA 90 - 905	4545	DA 90 - 957	4641
DA 90 - 913	4525	DA 90 - 958	4575
DA 90 - 914	4499	DA 90 - 959	4718
DA 90 - 915	4497	DA 90 - 960	4592
DA 90 - 918	4660	DA 90 - 961	4584
DA 90 - 920	4673	DA 90 - 962	4570
DA 90 - 921	4526	DA 90 - 964	4577
DA 90 - 922	4579	DA 90 - 965	4643
DA 90 - 923	4549	DA 90 - 966	4573
DA 90 - 924	4587	DA 90 - 967	4678
DA 90 - 929	4547	DA 90 - 968	4646
DA 90 - 930	4553	DA 90 - 969	4661
DA 90 - 931	4554	DA 90 - 970	4672
DA 90 - 932	4556	DA 90 - 971	4711
DA 90 - 933	4536	DA 90 - 972	4662
DA 90 - 934	4539	DA 90 - 973	4663
DA 90 - 935	4557	DA 90 - 974	4664
DA 90 - 936	4532	DA 90 - 975	4666
DA 90 - 937	4537	DA 90 - 976	4667
DA 90 - 938	4534	DA 90 - 977	4677
DA 90 - 939	4558	DA 90 - 978	4676
DA 90 - 940	4540	DA 90 - 980	4714
DA 90 - 941	4527	DA 90 - 981	4708
DA 90 - 942	4528	DA 90 - 982	4681
DA 90 - 943	4650	DA 90 - 983	4682
DA 90 - 944	4566	DA 90 - 988	4680
DA 90 - 945	4567	DA 90 - 989	4683
DA 90 - 946	4569	DA 90 - 990	4685
DA 90 - 947	4568	FCC 90 - 136	4381
DA 90 - 948	4530	FCC 90 - 137	4492
DA 90 - 949	4629	FCC 90 - 138	4482
DA 90 - 950	4627	FCC 90 - 139	4489
DA 90 - 951	4625	FCC 90 - 173	4653

Delegated Authority or FCC Number	Page
FCC 90 - 220	4686
FCC 90 - 229	4500
FCC 90 - 231	4630
FCC 90 - 237	4651
FCC 90 - 244	4518
FCC 90 - 245	4590
FCC 90 - 247	4560
FCC 90 - 250	4562
FCC 90 - 251	4564
FCC 90 - 252	4550
FCC 90 - 254	4614
FCC 90 - 255	4604
FCC 90 - 256	4647
FCC 90 - 257	4601
FCC 90 - 258	4599
FCC 90 - 259	4589
FCC 90 - 262	4655
FCC 90 - 263	4520
FCC 90 - 266	4596
FCC 90 - 267	4593
FCC 90D - 33	4506
FCC 90R - 64	4669
FCC 90R - 65	4674

Federal Communications Commission Record

Table of Cases by Docket Number
Volume 5
Issue 15

Docket Number				Page
BC	Dkt.No.82	-	282	4596
CC	Dkt.No.86	-	182	4718
CC	Dkt.No.88	-	57	4686
CC	Dkt.No.88	-	135	4604
CC	Dkt.No.90	-	11	4678
CC	Dkt.No.90	-	132	4668
CC	Dkt.No.90	-	313	4630
CC	Dkt.No.90	-	327	4581
CC	Dkt.No.90	-	336	4599
GEN	Dkt.No.90	-	312	4500
MM	Dkt.No.86	-	438	4562
MM	Dkt.No.87	-	267	4381
MM	Dkt.No.87	-	269	4564
MM	Dkt.No.87	-	426	4669
MM	Dkt.No.88	-	28	4558
MM	Dkt.No.88	-	83	4518
MM	Dkt.No.88	-	211	4651
MM	Dkt.No.88	-	487	4593
MM	Dkt.No.88	-	508	4482
MM	Dkt.No.88	-	510	4489
MM	Dkt.No.88	-	558	4506
MM	Dkt.No.88	-	608	4540
MM	Dkt.No.89	-	46	4492
MM	Dkt.No.89	-	163	4539
MM	Dkt.No.89	-	334	4537
MM	Dkt.No.89	-	365	4685
MM	Dkt.No.89	-	368	4681
MM	Dkt.No.89	-	369	4556
MM	Dkt.No.89	-	386	4536
MM	Dkt.No.89	-	397	4560
MM	Dkt.No.89	-	427	4557
MM	Dkt.No.89	-	475	4682
MM	Dkt.No.90	-	68	4674
MM	Dkt.No.90	-	328	4523
MM	Dkt.No.90	-	329	4521
MM	Dkt.No.90	-	330	4522
MM	Dkt.No.90	-	331	4543
MM	Dkt.No.90	-	332	4545
MM	Dkt.No.90	-	333	4534
MM	Dkt.No.90	-	334	4532
MM	Dkt.No.90	-	335	4554
MM	Dkt.No.90	-	338	4587
MM	Dkt.No.90	-	339	4683
PR	Dkt.No.88	-	139	4614
PR	Dkt.No.89	-	113	4655

Federal Communications Commission Record

Table of Cases by Rulemaking Number
Volume 5
Issue 15

Rulemaking Number	Page
RM - 5643	4686
RM - 5896	4558
RM - 6205	4655
RM - 6345	4558
RM - 6497	4540
RM - 6560	4599
RM - 6562	4599
RM - 6563	4599
RM - 6716	4537
RM - 6756	4540
RM - 6757	4540
RM - 6758	4540
RM - 6759	4540
RM - 6791	4550
RM - 6809	4681
RM - 6811	4685
RM - 6847	4556
RM - 6880	4536
RM - 6914	4557
RM - 6925	4682
RM - 6935	4539
RM - 6957	4589
RM - 7007	4589
RM - 7046	4537
RM - 7056	4554
RM - 7315	4683
RM - 7340	4534
RM - 7341	4532
RM - 7400	4650

Federal Communications Commission Record

Table of Cases by City
Volume 5
Issue 15

City/State	Page	City/State	Page
Arcadia, FL	4540	Mosinee, WI	4543
Austin, TX	4590	Mount Shasta, CA	4558
Boone, IA	4537	Mount Vernon, MO	4682
Buckeye, AZ	4521	Newton, IL	4522
Canton, MO	4557	North Naples, FL	4540
Christiansted, VI	4564	Orangeburg, SC	4536
Coahoma, TX	4683	Orlando, FL	4575
Columbus, NE	4539	Ottumwa, IA	4685
De Witt, AR	4554	Palmdale, FL	4540
England, AR	4554	Port Huron, MI	4562
Goodlettsville, TN	4593	Rochester, NY	4506
Goulds, FL	4540	Roswell, GA	4560
Greenwood, MS	4681	Santa Clara, CA	4530
Gregory, TX	4587	Smyrna, TN	4545
Hampton, AR	4643	Stuart, IA	4537
Immokalee, FL	4540	Sweet Home, OR	4532
LaBelle, FL	4540	Twin Lakes, IA	4556
Laredo, TX	4711	Venus, FL	4540
Lebanon, VA	4651	Webster, NY	4518
Modesto, CA	4674	Weed, CA	4558
Montecito, CA	4669	Westerville, OH	4596
Mora, NM	4534	Whitehall, MI	4523

Federal Communications Commission Record

Subject Index
Volume 5
Issue 15

Subject	Page
Adjudication	
Administrative Law Judge Decision	
Character qualifications	4596
Cross interest	4651
Evidentiary privilege	4560
Financial qualifications	4562
Integration of ownership into management, quantitative aspect	4596
Limited partnership	4518
Misrepresentation and lack of candor	4596
Orders or Notices	
Minority ownership participation: distress sale/tax certification	4506
New service v. expansion of existing service	4506
Amateur Radio Service (ARS)	
ARS - Aliens, operation of station by	
Alien amateur to operate a station in the U.S., permission for an	4614
Application requirments	4614
ARS - Licenses, examinations for operators'	
Elements and standards in examination	4614
When examination is required	4614
ARS - Transmissions and practices, prohibited	
Obscenity/indecency/profanity prohibited	4614
Volunteer-Examiner Coordinators (VEC)	
VEC to accredit examiners to prepare and administer exams	4553
Broadcast Radio Services - General Rules	
Program contents	
Candidates for public office	4627, 4643
Broadcasting - AM Stations	
Interference during operation	
Groundwave field strength, graphs showing	4489
Radiation	
Engineering charts and related formulas	4482

Subject	Page
Broadcasting - FM Stations	
Allotments and assignments	
Allotments, table of	4540, 4536 4537, 4534 4557, 4558 4683, 4685
Cable Television Service	
Equal employment opportunity requirements	
Policy statement	4590
Carriers: Service Altered	
Cable television video programming facilities	
Video programming facilities by telephone common carriers	4547
Extensions and supplements	
Applications, contents of	4666, 4667
Commission Organization	
Delegations of authority - Chief, Common Carrier Bureau	
Limitations on delegated authority	4601, 4673
Delegations of authority - Chief, Private Radio Bureau	
Commission en banc, matters to be referred to the	4641
Common Carriers: Miscellaneous Rules	
Allocation of costs to regulated or non-regulated costs	4646
Enhanced services (computer) and customer-premises equipment	4714, 4708
Communications Act of 1934	
Common Carriers	
Accounts, records, memoranda,forms of; depreciation charges	4629
Complaints to the commission	4526, 4625
Extension of lines, certificate for	4666, 4667
Management of the business, Commission may inquire into	4680
Service and charges	4680
Federal Communications Commission	
Purposes of the Act	4618
Penal provisions; forfeitures	
Rebates and offsets, forfeitures in cases of	4625, 4590
Radio, provisions for	
Candidates for public office, facilities for	4627, 4643

Subject	Page
Radio, provisions relating to	
Commission, general powers of	4630
Disaster Communications Service (DCS)	
General information	
Provisions for response and for other temporary facilities	4520
Frequency Allocations and Radio Treaty Matters	
Allocation, assignment, and use of radio frequencies	
International and U.S. table of frequency allocations	4650
Operational-Fixed Microwave Service, Private	
Technical standards	
Frequencies available, tables of assignments of	4655
Practice and Procedure	
Common carriers: complaints	
Formal or informal	4566, 4567
Common carriers: complaints, informal	
Form	4625, 4625
Procedure	4625
Common carriers: financial and accounting reports/requests	
Part 31, reports and requests to be filed under	4601
Ex parte presentations, general information	
Purpose: to specify standards of conduct and procedure	4672
Sanction for violation of any provision of this subpart	4672
Hearing proceedings: presiding officer	
Authority of presiding officer	4593
Hearing proceedings: presiding officer's rulings	
Interlocutory ruling, appeal from	4593, 4674
Hearing proceedings: review proceedings	
Decision, appeal and review of initial	4518
Pleadings, briefs	
Extension of time, motions for	4592, 4668
Stay, cross-reference for a request for a	4629, 4577
Proceedings, miscellaneous	
Forfeiture proceedings	4530, 4590
Reconsideration/review of Commission action	
Actions by delegated authority, application for review of	4560, 4562
Reconsideration of a final FCC action, petition for	4596

Subject	Page
Rulemaking proceedings: proceedings	
Sources of commencement of proceedings	4630
Public Mobile Service	
Applications and licenses-filing requirements	
Communications by radio, authorization required	4530, 4711
Applications and licenses-processing	
Grants by random selection	4528, 4575
Mutually exclusive applications	4528, 4575
Public land mobile service	
Air-ground radio telephone service	4599
Antenna height and erp limit	4604
Co-channel stations, milage separation provisions for	4604
Erp for various stations	4604
Technical standards	
Harmful interference, provisions for assignment of frequencies re	4604
Transmitters, no unauthorized access to	4604
Telecommunications Companies: Classes A and B	
Nonregulated activities	4549, 4646
Regulated accounts	4646
Terminal Equipment Connected to Network	
Registration procedures	
Wiring for one and two line service, installation of	4686
Terminal equipment, conditions on use of	
Connection through standard plugs and jacks	4686

TABLE OF STATUTORY AND RULE PROVISIONS

	Page
(Arthur Andrew Mobley) (Buckeye, Arizona)	4521
(Peggie Post Mallery) (Mosinee, Wisconsin)	4543
(Pyramid Broadcasting, Inc.) (Whitehall, Michigan)	4523
(S. Kent Lankford) (Newton, Illinois)	4522
(Smyrna Broadcasting Corporation) (Smyrna, Tennessee)	4545
(Stuart Gaines Broadcasting Corporation) (Gregory, Texas)	4587
000.291 authority delegated	4579
000.291 Authority delegated	4601
000.291 authority delegated	4673
000.331 Authority delegated	4641
001.043 Requests for Stay	4564
001.043 Requests for Stay	4577
001.043 Requests for Stay; cross-reference	4629
001.044 Separate Pleadings for Different Requests	4564
001.046 - Motion for Ext. of Time	4592
001.080 (f)(4) Forfeiture Order	4590
001.080 Forfeiture proceedings.	4530
001.106 Petitions for reconsideration	4596
001.106 Petitions of Reconsideration	4564
001.115 Application for Review	4560
001.115 Application for Review	4562
001.115 Application for Review	4593
001.1204 General exemptions	4672
001.2001-1.2004 Implementation of the Anti-Drug Abuse Act	4500
001.243 Authority of Presiding Officer	4593
001.276 Appeal and review of initial decision	4518
001.301 Appeal from Presiding Officer's Interlocutory Ruling	4593
001.301 Appeal, Denied	4674
001.411 Commencement of Rule Making Proceedings	4630
001.711 Formal or informal complaints	4566
001.711 Formal or informal complaints	4567
001.711 Formal or informal complaints	4568
001.711 Formal or informal complaints	4569
001.716 Informal Complaints, Form	4625
001.717 Informal Complaints, Procedure	4625
001.731 Motions to Dismiss Complaints	4526
001.791 Reports and requests to be filed under Part 32 of th	4601
002.106 Table of Frequency Allocations	4650
022.003 Authorization Required	4711
022.003 Authorization required.	4530
022.031 Mutually exclusive applications.	4528
022.031 Mutually exclusive applications.	4575
022.033 Grants by random selection	4575
022.033 Grants by random selection.	4528
022.043 Period of construction	4711
022.100 Frequencies, interference	4604
022.117 Transmitters	4604
022.503 Geographic Separation of co-channel stations	4604
022.505 Antenna height-power Limit	4604
022.506 Power	4604

022.521(b) Air-ground radiotelephone service, Locations 4599
032.014 Regulated Accounts 4646
032.018 Waivers 4573
032.023 Nonregulated Accounts 4646
032.023 Nonregulated activities 4549
032.4240 Reaquired debt 4629
032.4520 Additional paid-in capital 4629
032.4550 Retained Earnings 4629
032.7360 Other nonoperating income 4629
036.000 Appendix-Glossary, Study Area 4525
036.000 Appendix-Glossary, Study Area 4570
036.125 Local Switching Equipment 4570
036.125 Local Switching Euqipment - Category 3 4584
036.154 Exchange Line Cable and Wire Facilities 4570
047.000 C.F.R. § 1.46, Motion for Extension of Time 4668
047.000 C.F.R. § 202(a) Discrimination preference 4580
047.000 C.F.R. § 204(a), 403 lawfulness of tariff revisions 4581
047.000 CFR Part 61, Tariffs 4589
047.000 CFR § 61, Tariffs 4678
047.000 CFR § 64.702, Furnishing of Enhanced Services and C 4708
047.000 CFR § 64.702, Furnishing of Enhanced Services and C 4714
047.000 CFR §64.702, Furnishing of Enhanced Services and CP 4589
063.001 Contents of Applications 4664
063.001 Contents of Applications 4666
063.001 Contents of Applications 4667
063.054 Facilities for Provision of Video Programming 4547
064.901 Allocation of Costs 4646
064.902 Transactions with affiliates 4601
068.104 Means of Connection 4686
068.213 Installation of other than "fully protected" 4686
073.1750 Discontinuance of operation 4492
073.184 Groundwave field strength graphs 4489
073.190 Engineering Charts & Related Formulas 4482
073.1940 Broadcasts by candidates for public office 4627
073.1940 Broadcasts by candidates for public office 4643
073.202 FM Table of Allotments 4540
073.202 FM Table of Allotments 4554
073.202 FM Table of Allotments 4557
073.202 FM Table of Allotments 4558
073.202 FM Table of Allotments 4681
073.202 FM Table of Allotments 4682
073.202 FM Table of Allotments 4683
073.202, FM Table of Allotments 4532
073.202, FM Table of Allotments 4534
073.202, FM Table of Allotments 4536
073.202, FM Table of Allotments 4537
073.202, FM Table of Allotments 4539
073.202, FM Table of Allotments 4556
073.202, FM Table of Allotments 4685
073.3517 Contingent applications 4492
073.3525 Agreements for Removing Application Conflicts 4564
073.3571 Processing of AM broadcast stati applications 4492
076.073 General EEO Policy 4590
076.075 EEO Program Requirements 4590

087.213 Scope of Service 4550
087.215 Supplemental Eligibility 4550
087.347 Supplemental eligibility 4653
094.065 Frequencies 4655
094.071 Emission and bandwidth limitations 4655
097.019 Application for a renewed or modified license 4614
097.021 Mailing address and station location 4614
097.119 Station identification 4614
097.301 Authorized frequency bands 4614
097.305 Authorized emission types 4614
097.501 Qualifying for an amateur operator license 4553
099.001 Basis and purpose. 4520
300.151 Purposes of Act, Creation of Federal Communications 4618
300.201 Service and Charges 4680
300.208 Complaints to the Commission 4526
300.208 Complaints to the Commission 4625
300.208 Complaints to the Commission 4647
300.214 Extension of Lines 4664
300.214 Extension of Lines 4666
300.214 Extension of Lines 4667
300.218 Inquiries into Management 4680
300.220 Accounts, Records, and Memoranda; Depreciation Charg 4549
300.220 Accounts, Records, and Memoranda; Depreciation Charg 4601
300.220 Accounts, Records, and Memoranda; Depreciation Charg 4629
300.303 General Powers of Commission 4630
300.315 Facilities for candidates for public office 4627
300.315 Facilities for candidates for public office 4643
300.503 Forfeitures 4625
300.503 Forfeitures In Cases of Rebates and Offsets 4590
300.634 Equal Employment Opportunity 4590
500.104 City Coverage-FM 4506
500.112 Air Hazard 4506
500.128 Misrepresentation 4506
500.132 Financial Qualifications 4506
500.140 Comparative 4506
500.3009 amendment of application, as of right 4651
500.3035 integration of ownership, quantitative 4596
500.3050 diversification of control, effect of divestiture o 4651
500.3095 character qualifications 4596
500.3125 misrepresentation and lack of candor 4596
500.3170 Financial Qualification 4562
500.3170 Financial Qualifications, Remand 4669
500.3190 Attorneys, improper conduct 4518
500.3195 Evidentiary Privilege 4560
500.3220 Limited partnership 4518
Formal or informal complaints 4662
Formal or informal complaints 4663
Formal or informal complaints 1.711 4527
Part 2 Frequency Allocation Radio Treaty Matters; General Ru 4381
Part 25 Satellite Communications 4650
Part 69 to est. new switched access rate elements for EWP 4586
Part 73 Radio broadcast services 4381
Part 90 Private Land Mobile Radio Services 4381
Voice and data communications; 47 Section 0.291 authority de 4676

Voice and data communications; 47 Section 0.291 authority de 4677

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-267

In the Matter of

Review of the Technical
Assignment Criteria for the
AM Broadcast Service

NOTICE OF PROPOSED RULE MAKING

Adopted: April 12, 1990; Released: July 18, 1990

By the Commission: Commissioner Barrett issuing a separate statement.

TABLE OF CONTENTS

	Paragraph
I. Introduction	1
II. Goal	4
III. History	13
IV. Associated Rule Makings	18
V. Technical Standards	26
VI. Consolidation	53
VII. Migration to the Expanded Band	64
VIII. Receiver Model	96
IX. Other Matters	100
X. Summary and Conclusion	105
XI. Administrative Matters	106
XII. Ordering Clause	114

I. INTRODUCTION

1. This *Notice of Proposed Rule Making* (*Notice*) constitutes the penultimate step toward the achievement of this Commission's overall goal for AM broadcasting - the transformation and revitalization of the AM broadcast service by the year 2000. For the first fifty years since its debut in the 1920's, AM radio's contribution to daily life in America was unquestioned. As our first national medium of mass communications, AM radio united the nation in good times and bad. It brought the voices of national and international leaders into our homes, making us witnesses to history. It entertained us. Each night families and friends gathered around the radio and tuned to AM stations to learn of world, national and local events and to hear the latest episode in their favorite radio show. During the last twenty years, however, channel congestion, interference and low fidelity receivers have taken their toll, dulling the competitive edge of this once vital service. Not surprisingly, once loyal AM listeners have shifted their allegiance to newer mass media services that offer them higher technical quality.

2. As a result of these developments, the once preeminent AM service is now in critical need of attention. For the past several years the Commission has involved itself in an intensive effort to identify the service's most pressing problems and the sources of and solutions to those problems. In September of last year we challenged broadcasters, radio manufacturers and the listening public to tell us how we could revitalize the AM radio service. In an *en banc* hearing lasting a full day in November they responded to the challenge. Their response reaffirms our conviction that a concerted effort by this Commission, the broadcasting community and radio manufacturers can rejuvenate the AM radio service. In this *Notice* we set forth our comprehensive strategy to reach this objective, a strategy requiring coordinated action by both the Commission and the industry.

3. One principal point must be recognized at this juncture. In developing the proposals contained in this *Notice*, our focus has been on what measures will, in our judgment, attain the objective of restoring the AM service rather than on measures that might more directly benefit one or more segments of the industry itself. Therefore, we acknowledge that the actions we propose today will not satisfy those whose primary focus has been on one particular segment of the industry. Nevertheless, in this Rule Making we are dealing with no less an issue than the survival of the AM service. In light of that fact, the Commission trusts that those commenters whose interests are not fully realized by these proposals will perceive that we have attempted to balance their individual perspectives and needs with the overarching need to revitalize the AM service as a whole. We will now turn to our specific proposals.

II. GOAL

4. To provide specific structures for the revitalization of the AM service we have defined two models, one for the new spectrum between 1605 and 1705 kHz, and a variation for the existing band between 535 and 1605 kHz. These models will serve as two focal points for defining the future of the AM service. Our intention is to encourage and approve those measures which move the service in the direction of the models; similarly, we intend to discourage and disapprove proposals that do not.

5. The model for what has come to be called the expanded band (1605-1705 kHz) enjoys the advantage that it will apply in the spectrum as yet unused by broadcasters. Therefore we can select for it those characteristics that are both desirable and immediately attainable.

Model I: 1605-1705 kHz

- o Fulltime operation with stereo modulation
- o Competitive technical quality
- o 10 kW daytime power
- o 1 kW nightime power (more, if circumstances permit)
- o Non-directional antenna (or simple directional array)
- o 400-800 kilometers (249-497 miles) separation between co-channel stations

A model I station should possess a daytime service radius of 56 to 72 kilometers (35 to 45 miles), free from co-channel and adjacent channel interference. This service radius will obviously be less during the night depending on actual separations, power and number of operating stations. Station separations will vary depending on geographic location.

6. The model for the existing broadcast band, however, must reflect the fact that the band is densely populated with stations having wide variations in power, spacing, antenna patterns and protection from interference. Because these and other considerations make it very difficult to define ideal or uniform characteristics, we have selected for our second model those attributes toward which the service should aspire as a minimum.

Model II: 535 - 1605 kHz

- o Fulltime operation with stereo modulation
- o Competitive technical quality
- o Daytime coverage - 6400 square kilometers (2500 square miles), free of co-channel and adjacent channel interference
- o Nighttime coverage - at least 15% of daytime coverage, free of co-channel and adjacent channel interference
- o Simplified antenna arrays

In both models the term "competitive technical quality" means a level of audible quality that is competitive with FM broadcasting when heard in the typical automobile and home environment. We seek to achieve that quality while preserving and building on AM's distinctive ability to cover large distances without disruptions caused by shadowing and multipath interference.

7. Model I is based on the technical criteria used to develop the allotment plan for the western hemisphere.[1] The co-channel separation has been increased so as to assure better nighttime service. We anticipate that stations will operate with these parameters. Model II is somewhat reduced to account for a greater density and variety of stations. The expected non-directional service radius is approximately 45 kilometers (28 miles) during the day and 18 kilometers (11 miles) at night. We believe it highly desirable for all stations to attain these values *or better*. We seek comment on both of these models, particularly with regard to our inclusion of stereo broadcasting. In the expanded band (Model I), should all stations be required to transmit in stereo or should a commitment to transmit in stereo be treated as a preference factor? In the existing band (Model II), should stereo transmissions become mandatory as a part of any measure to increase service and reduce interference or after a certain number of years?

8. As we endeavor to move toward a model service, we must also deal with the many problems that exist today. Apart from competition from FM broadcasting, AM stations must contend with skywave interference, irregular coverage, irregular operating hours, poor receivers and interference from nature and electrical devices. These factors have reduced the attractiveness of AM, as its audience share shows. There is a critical need to restore the technical and operational integrity of the service. It would disserve the public and lead to further deterioration if we were simply to continue adding new stations.

9. Our comprehensive strategy to move from a troubled to a model service depends on a reduction in the density of stations. The particular plan we have developed calls for the Commission to use three weapons from its regulatory arsenal to attack interference and congestion on AM channels. First, we intend to revise and implement the AM technical standards in such a manner as to achieve a reduction in the interference with which AM broadcasters must contend in their primary service areas. Through a series of discrete Rule Making proceedings, we have already begun this task. In this docket, however, we will coordinate the timing and substance of revised technical standards so that they do, in fact, lead to a significantly improved AM service. Second, we intend to give broadcasters both the ability and the incentive to use their own initiative to improve AM radio service to the public. Again, we have already begun this effort. In a *Report and Order* [2] adopted today, we authorize licensees to undertake private negotiations to reduce interference among AM stations. To encourage broadcasters to use this tool, we now propose that the Commission issue tax certificates to broadcasters agreeing to reduce interference to co-channel or adjacent channel stations. To create an additional incentive for licensees to reduce interference, we also propose a limited relaxation of our multiple ownership rules. We propose to permit ownership of AM stations with overlapping principal city contours if the licensee agrees to adjust operation of either station to reduce co-channel or adjacent channel interference to other AM broadcasters.

10. A recent international agreement (see paragraph 16, *infra*), which becomes fully effective in July 1990, has allocated ten additional channels to the domestic AM radio service. This allocation offers us a unique opportunity to reduce congestion and interference on existing AM channels. It is an opportunity that we intend to seize. Thus, the third step in our plan to improve AM service will be to encourage those AM stations making the most significant contribution to congestion and interference in the existing band to move their operations to one of the new channels. This *Notice* proposes principles to govern allocation and assignment of these new channels as well as eligibility criteria and preferences designed to achieve this objective.

11. As part of our strategy to improve transmission quality, we will also seek to improve the performance of receivers. In particular, we aim to use the draft recommendation of the National Radio Systems Committee to define the characteristics of a good quality receiver which we would use to develop standards for improving

the AM service. While we would not require radio manufacturers to incorporate these characteristics in their products, we believe such a model would serve as a useful benchmark for government and industry.

12. We believe the Commission must take each of the steps outlined above if we are to raise the quality and thus the competitive posture of the AM radio service significantly. This Commission action is only the first component of our strategy to restore AM radio's competitive edge. For our strategy to succeed, both AM broadcasters and radio manufacturers must make a commitment to take those actions within their power to meet the public demand for a technically superior service. The *en banc* hearing has convinced us that each is ready to make that commitment. For this reason we are confident that, working together, this Commission and the industry can create a revitalized AM service, a service of superior technical quality that can meet fully the communications needs of the American public as we enter the twenty-first century.

III. HISTORY

13. *Domestic*. On April 3, 1986, the Mass Media Bureau released a report examining many of the technical, legal, and policy issues related to the AM broadcast service. [3] The *Report* sought to identify changes to existing rules that would free AM broadcasters to meet the competitive challenges facing them and to enhance their service to the public. Comments received in response to the *Report* guided the Commission's subsequent efforts to identify technical issues ripe for further study.

14. The first of these was an omnibus *Notice of Inquiry (Inquiry)*[4] initiating a comprehensive review of the complex, interrelated technical principles that underlie AM station assignment criteria. The *Inquiry* asked whether we should revise field strength values for the protected contours of AM stations, the prescribed minimum usable field strength, the prescribed co-channel and adjacent channel protection ratios, and the way we measure the effects of atmospheric and man-made noise, and skywave and groundwave propagation. In addition, the *Inquiry* asked whether the public would benefit if we permitted interested parties themselves to resolve interference rights and responsibilities through private negotiations. The Commission promised to begin Rule Making actions when the record developed supported such action.

15. The comments filed in response to the *Inquiry* prompted Commission action on several fronts. In 1988, the Commission opened five rule making proceedings proposing changes to its technical rules[5] and a sixth proposing policy changes to achieve interference reduction through voluntary agreements among AM licensees.[6] We have taken final action in three of these proceedings today. We believe this will help the Commission and industry resolve more quickly those issues remaining before we can achieve our ultimate goal, a revitalized AM broadcast service. We will, however, delay the effective dates of the associated rule changes until we complete our work in this proceeding. These delays will permit us to coordinate all the changes required to assure a positive net result. As to the the remaining three technical rule makings, we will consider them further herein.

16. *International*. The 1979 International Telecommunication Union World Administrative Radio Conference (WARC) allocated 1605-1705 kHz to the broadcasting service in Region 2 (the western hemisphere), giving that service an exclusive allocation of 1605 to 1625 kHz and primary status from 1625 to 1705 kHz with implementation to occur in accordance with a future regional plan. A two-session Regional Administrative Radio Conference (RARC) held in 1986 and 1988 planned the spectrum and produced the rules under which we would share this new allocation with the other nations of Region 2.[7]

17. The RARC adopted an allotment plan for the ten additional channels (1610-1700 kHz) made available for AM broadcasting in this hemisphere. With few exceptions,[8] the U.S. was allotted 1620, 1640, 1660, 1680 and 1700 kHz for nationwide use. Generally, these channels were alloted for use in the U.S. without restriction except in the vicinity of Canada and Mexico, where adjacent channel coordination would be required. The remaining frequencies were allotted to Canada and Mexico, and therefore their use in the U.S. within 330 kilometers (205 miles) of either border would be restricted.[9] The Conference also adopted technical standards[10] including minimum spacings of 330 kilometers (205 miles) between broadcast stations on the same channel and additional technical criteria designed to ensure that non-broadcast use does not interfere with broadcasting.

IV. ASSOCIATED RULE MAKINGS

18. We now briefly describe the six AM rule making proceedings that followed the *Inquiry*.

19. *MM Docket No. 88-508*. This proceeding considered changes to the way we calculate skywave field strength. We proposed to use a new, more accurate skywave propagation model that takes into account the effects of the geomagnetic latitude of the propagation paths. We also proposed changes to our rules for calculating skywave field strength. In a *Report and Order* adopted today, we are making these changes to our rules.[11] With these changes, we should be able to depict more accurately nighttime skywave service and interference on all channels.

20. *MM Docket No. 88 - 510*. This proceeding considered changes to the way we calculate groundwave field strength. We proposed to replace our groundwave curves with new ones that would cure certain "curve fitting" deficiencies. In a *Report and Order* adopted today, we are substituting these new groundwave propagation curves for the current curves.[12] Using these new curves, we should be able to predict more accurately groundwave service and interference.

21. *MM Docket No. 89 - 46*. A *Report and Order* adopted today will allow licensees, subject to Commission approval, to reach agreements to make facilities changes that would reduce interference and will eliminate the "grandfathering" of deleted AM stations.[13] Specifically, the Commission will accept contingent applications that would reduce AM interference but will not entertain competing applications in those situations. Additionally, we wish to avoid "daisy-chain" applications when considering interference reduction agreements. These arise when a series of proposals serving substantially different areas become interlocked (or mutually exclusive) because of prohibited overlapping contours. *See* paragraph 56, *infra*.

22. *MM Docket No. 88 - 376*. In the *First Report and Order* in this proceeding,[14] we adopted, with minor modifications, the National Radio Systems Committee (NRSC) emission standard. Equipment meeting this standard will reduce its emitted AM signal bandwidth, and consequent-

ly the level of adjacent channel interference. This should encourage manufacturers to produce receivers with wider effective bandwidth, thereby improving AM service fidelity. This new emission standard goes into effect June 30, 1990, and will serve as a basis for any new adjacent channel protection ratios.

23. Awaiting action in the same docket is a proposal to revise Section 73.37(b) of our rules to allow AM applicants to accept some service contour overlap. Under this proposal, applicants for new or modified AM facilities could elect to protect their 1.0 mV/m daytime contour rather than the traditional 0.5 mV/m daytime contour, provided they fully protect all other stations. For the reasons given in paragraph 31, *infra*, we will take no further action on this proposal and will terminate the docket.

24. *MM Docket No. 88 - 509*. Commission rules currently allow certain daytime-only stations to operate during nighttime hours. Under these rules, however, many daytime-only stations can operate at night only with very low level power. In this proceeding, we proposed to eliminate restrictions on the antenna systems that could be used for such nighttime operations to compensate, in part, for the power restrictions. Because these proposals are closely related to our current AM improvement efforts, we believe that they should be considered herein. *See* paragraph 42, *infra*, for further discussion on this subject. To permit a proper evaluation of the issues, we will incorporate herein the record developed in MM Docket No. 88-509. In view of this, no further action appears necessary and we delegate authority to the staff to terminate MM Docket No. 88-509.

25. *MM Docket No. 88-511*. In this proceeding, we proposed to revise the procedures for calculating nighttime protection levels of AM stations. In particular, we proposed to modify how we calculate nighttime RSS (root-sum-square) interference levels of Class II and Class III stations, and the skywave service contours of Class I stations. Because these proposals are closely related to our current AM improvement efforts, we believe that they should be considered herein. *See* paragraphs 38-41, *infra*, for further discussion on this subject. To permit a proper evaluation of the issues, we will incorporate herein the record developed in MM Docket No. 88-511. In view of this, no further action appears necessary and we delegate authority to the staff to terminate MM Docket No. 88-511.

V. TECHNICAL STANDARDS

26. *Introduction*. As the first step in our plan to improve AM service, we intend to revise our technical standards to force a reduction in the interference AM licensees face in their primary service areas. We intend to base our efforts to improve AM broadcasting on a solid technical foundation. Technical standards will guide our efforts to restore the existing band to a competitive position, to determine which stations should be given priority to migrate to the expanded band and to establish planning criteria to insure that stations in the expanded band exhibit Model I characteristics.

27. New technical standards applied to the existing band must reflect an awareness of a station's interference protection and radiation rights that were initially established on the basis of more relaxed standards. The process of restoration, however, requires that new stations or modifications to existing stations provide greater protection to other AM broadcasters than has been required in the past. The creation of technical standards striking a new balance between service and interference can achieve this. Because we do wish to accommodate some new stations and modifications to existing stations, these standards must continue to permit small incremental increases in interference to existing stations, but in limited circumstances and by an amount less than presently tolerated.

28. We believe that the process of migration to the expanded band should be based on a method that ranks existing band stations according to the total nighttime interference they cause. For this method to provide meaningful comparisons, we further believe that all nighttime skywave signals should be considered as sources of interference. This differs from our current practice which defines interference as occuring only if the calculated skywave field strength exceeds prescribed levels.

29. AM technical assignment principles are complex and interrelated. To be certain that the cumulative effect resulting from multiple rules changes will be an AM service of enhanced quality, we cannot ignore these relationships. Our technical assignment principles are based upon a system of "protected contours" that depends upon the frequency relationship of the protected station and the interfering station, the class of the former and its hours of operation. The field strength values defining these normally protected contours, called the nominal usable field strength, or E_{nom}, are chosen to assure satisfactory reception in the presence of atmospheric noise, man-made noise and interference from other transmitters. In defining the protected contour for each class of AM station, the Commission weighed these objective factors and other subjective factors.

30. *Normally Protected Contours*. During the past twenty years, the number of new radio stations, both AM and FM, has dramatically changed the listening habits of the public. The protected contours currently prescribed in our rules, however, were developed well before this significant growth. The *Inquiry* asked whether, weighing the habits of today's listening public, the field strength values of these protected contours should be redefined. The majority of commenting parties agreed that the contours should not be redefined. We tentatively conclude that changing these contours would not significantly improve AM service and consequently we propose to leave them unchanged. One minor exception to this conclusion is discussed in paragraph 44, *infra*.

31. In MM Docket No. 88-376, we proposed to allow stations to accept interference within their normally protected contour. Although adoption of this change would provide greater flexibility for stations seeking increased service areas, it would also foster increased congestion and distorted service areas. For this reason, we find such a revision inconsistent with our goal. Therefore, we will take no further action on this subject and delegate authority to the staff to terminate MM Docket No. 88-376. In a related matter, we note that Section 73.37(b) of the rules permits interference within the normally protected contour of a station that is the only licensed station in its community. Since the creation of additional interference is contrary to our goal of reducing interference, we propose to eliminate that rule. Comments are requested on this proposal.

32. Technical factors used to derive a station's protected contours are the minimum usable field strength, or E_{min},[15] and noise, both atmospheric and man-made.[16] In

the *Inquiry*, we asked whether these factors should be revised. The comments offered no compelling policy reason to revise these factors and we tentatively conclude that these factors should remain unchanged.

33. Noise within the AM band can also be generated by radio frequency (RF) devices, regulated under Part 15 of our rules, and by RF lighting, regulated under Part 18. In 1989, the Commission adopted a comprehensive revision of Part 15.[17] In that proceeding, several changes were made to reduce the potential for interference to AM reception from radio frequency devices. This included applying emission standards to all intentional and unintentional radiators, and changing to a more accurate method of measuring emissions. In 1983, the Commission adopted standards for RF lighting that limited, on AM frequencies, the amount of RF energy that could be conducted into AC power lines.[18] In 1986, the Commission proposed radiated limits for RF lighting[19] but declined to adopt them because the existing conduction limits have proven effective in reducing radiated emissions.[20]

34. *Protection Ratios*. Co-channel and adjacent channel protection ratios prescribe the maximum permissible interference from one station to another. Their values reflect a compromise between maximizing the quality of received AM signals and the number of AM broadcast stations. The *Inquiry* posed many questions to determine whether we needed to change these ratios to improve AM service quality. A majority of the commenters supported no change in the co-channel ratio, but an increase in the adjacent channel ratio. We tentatively conclude that no change in the co-channel protection ratio is warranted and address only adjacent channel protection ratios in this *Notice*.

35. *Adjacent Channel Protection Ratios*. Currently, first adjacent channel protection is afforded only to the daytime operation of stations on the basis of a 1:1 (0 dB) desired/undesired ratio. Adjacent channel nighttime skywave interference is not now considered. To assure protection from second and third adjacent channel interference, the current rules include no protection ratios but instead require that stations be separated a certain distance determined by the location of specific field strength contours.

36. A vast majority of comments strongly recommended changing the first adjacent channel ratio to a value approaching 16 dB. Many commenters cite two comprehensive studies commissioned by the National Association of Broadcasters.[21] A principal conclusion of the second study, known as the *Angell Study*, was that for adjacent channel interference, the preferred ratios were "16 dB for music, 16 dB for talk with talk interference and 20 dB for talk with music interference."

37. For the second and third adjacent channel cases, there were limited comments and no comments, respectively; and we infer that there is general satisfaction with our present requirements. Further we have no basis for seeking a revision and believe that our current standards are adequate. In view of the foregoing, we propose to change the first adjacent channel value to 16 dB with no change in our second and third adjacent channel protection requirements.[22]

38. *Nighttime Interference Calculations*. The current method of determining nighttime interference was adopted years ago to provide for orderly development of the AM broadcast service. The number of stations grew but at the expense of incremental increases in actual interference. The *Inquiry* proposed to limit increased interference by including adjacent-channel nighttime skywave interference in RSS calculations and by lowering the threshold (called the RSS exclusion) used to determine whether interference occurs. In response to our original proposal, the Radio Advisory Committee expressed concern that its adoption would lead to a net increase in interference in the AM band and suggested an alternative.

39. We believe that neither our original proposal nor the alternative suggested by the Advisory Committee would lead to the benefits we seek in this proceeding. We have tentatively concluded that more substantial change is required. In general, a station's normally protected contour at night currently ranges from 2.5 to 10 mV/m with the interference-free (RSS limitation) even higher. If we continued to protect high contour values, little improvement in AM service would be expected to occur. However, if we set the protection level low and consider only single signal protection, generally greater interference protection would be achieved. We initially believe that a 1 mV/m nighttime limitation would represent an appropriate protection level from which AM improvement would follow. Viewed in perspective, this value would be equivalent to protecting a 2 mV/m RSS (using 50% exclusion). Therefore, we propose that applications for new or modified AM stations would be acceptable if their individual nighttime limitations at the site of another co-channel or first adjacent channel station would not exceed 1.0 mV/m.[23] Consistent with this reasoning, for protection to skywave service of Class I stations, the maximum allowable level would be 0.25 mV/m at or within the 0.5 mV/m 50% contour. [24] This would be equivalent to protecting the 0.5 mV/m 50% contour (using 50% exclusion). In the event an existing station already causes a nighttime limitation in excess of either of the above values, modification of the station's operation will be acceptable if the calculated nighttime limitation described above is reduced by at least 10%. We seek comments on this proposal.[25]

40. Because of fading, skywave service generally lacks the quality of groundwave service. Further, because of the existing level of adjacent channel interference (which our technical rules currently ignore), we believe that our new protection criteria should assume the use of narrowband receivers at night. This assumption avoids an unacceptable trade-off between interference and service and allows listeners with narrowband radios to continue receiving skywave service. Thus, our proposal reflects an adjustment for adjacent channel interference to skywave service.

41. Although no longer required for determination of station protection under our above proposal, RSS calculations (without exclusion) would be used to evaluate city coverage of a station and to compute the ranking factor for migration preference purposes.

42. *Nighttime Enhancement for Daytimers*. For daytime-only stations, we propose adoption of the nighttime enhancement provisions appearing in MM Docket No. 88-509, including allowing separate daytime and nighttime antennas and transmitting sites and relaxed nighttime carriage requirements. As each station would be required to protect other stations in accordance with the new standards, no impact on other stations would result.

43. *Reclassification/Power Increases*. The omnibus nature of this proceeding makes it an appropriate docket to consider reclassifying AM stations to conform with the nomenclature used in international agreements to which the U.S. is a party. In general, Class I stations would be

renamed Class A stations; Class II and Class III stations would be labeled Class B; and Class IV stations would become Class C. The sub-classes, I-A, I-B and I-N would easily fit into a Class A category. However, sub-classes, II-A, II-B, II-C and III would, if changed to Class B, require changes to current protection levels.

44. We propose to adopt a nighttime protection level of 2.0 mV/m for all Class II-A, II-B, II-C and III stations. Whereas the selection of this level of contour protection would constitute an obvious improvement for Class II-B, II-C and III stations, it would appear to have a deleterious effect upon the service of Class II-A stations which are presently protected to the 0.5 mV/m contour. However, this consequence is essentially negated since 11 out of the 12 stations designated as Class II-A presently have service contours that are limited to values of 2.0 mV/m or greater with the twelfth being limited to a level of 1.8 mV/m. Stations presently possessing nighttime limits greater than 2.0 mV/m would be protected at the higher level. Additionally, we propose a power ceiling of 50 kW for Class B stations, which would allow stations to increase coverage in cases where all other technical criteria can be met. Comments are sought concerning these proposed changes to our AM classification system and associated changes to protected contours.[26]

45. We also propose the establishment of a fourth class of station which would facilitate the identification of those stations which lack fully protected unlimited-time operations. This category, Class D, would include all stations that are currently classified as: Class II-D, Class II-S, Class III-D and Class III-S. Creation of this separate class would help in providing a keener focus on a category of stations which has its own set of special needs.

46. *Advanced Antennas.* NAB is currently conducting tests on new types of antenna systems that might improve AM broadcast service. Licensees are experimenting with non-standard antenna systems (such as the PARAN antenna). We believe that we should defer changes in our antenna standards until these tests have been completed and their results analyzed.

47. *Split Frequency Operations.* Split frequency operation occurs when a station uses one frequency during the day and another at night. This mode of operation has been suggested as one possible solution to the problem daytime-only stations face. It would offer only a limited solution, however, because each daytime-only station would need to find an additional frequency that would permit operation without causing interference and that also would not preclude another daytime operation. Such frequencies are few in number and, in fact, exist only in the absence of an adjacent channel nighttime protection standard.

48. Up to now, we have treated split frequency requests on a case-by-case basis. We now tentatively conclude that split frequency operations use the spectrum inefficiently. Each such operation precludes reuse of as many as fourteen channels to varying degrees, compared to a seven channel preclusion for single frequency operations. Preclusion when skywave signal propagation is involved is even more pronounced and difficult to assess, particularly when we propose to accord stations first adjacent channel nighttime protection. Accordingly, we tentatively conclude that split frequency operations would be inconsistent with our efforts to improve AM service. Commenters who believe otherwise should address specifically how such operations would not impede our efforts to reduce interference and congestion.

49. *Expanded Band Technical Standards.* Before we can discuss anticipated coverage areas and other operational aspects of stations in the expanded band, we must first establish the technical standards that will define how we assign, and licensees construct, stations in the band. Currently, we have no rules governing broadcast use of the frequency range, 1605 to 1705 kHz. Because these frequencies are adjacent to the existing AM band, however, a vast body of relevant information concerning technical operation on adjacent spectral territory is readily available and can be easily applied to these frequencies. We propose that the technical standards applying to the existing AM band apply, generally, to operations in the expanded band.[27]

50. We wish to minimize the need for directional antennas in the expanded band. Whenever applicants propose to use directional antennas, we would require demonstration of antenna pattern achievement. Because the expected spacing between individual stations in the expanded band will provide adequate interference protection in the majority of cases, we anticipate that the engineering studies required of applicants will be significantly less burdensome than those required for stations in the existing band. Measured radials taken only in critical protection directions should be adequate to demonstrate compliance with radiation restrictions. We seek comment on our technical standards proposals for expanded band operations and the observations and assumptions on which they are based.

51. *City Coverage for Expanded Band Stations.* In the existing band, there is a fundamental requirement that licensees provide a minimum field strength over the community of license. Currently, during the day a 5 mV/m signal is required at all locations within a community; at night, a station's interference-free contour using the current RSS method must encompass the community of license. We routinely grant waivers of the nighttime coverage requirement when a licensee can show that at least 80 percent of the city will be served.

52. If a particular applicant were a suitable candidate for a specific allotment in the expanded band, but the Commission could not be assured of the requisite 100% nighttime coverage of its community, a plan possessing the flexibility to permit this assignment to be made without a burdensome waiver process would appear to serve the public interest. Consistent with such flexibility, the plan could still prescribe a required daytime coverage; complete 5 mV/m daytime envelopment has never been a problem for applicants to attain. Difficulties in meeting the prescribed coverage would arise only at night. This suggests that we should require only 50% nighttime city coverage (using the RSS method without exclusion) when we attempt to match applicants and allotments in the expanded band. We seek comment on this tentative conclusion and its underlying assumptions, including the option of allowing 50% on a temporary basis and ultimately returning to the 100/80% standard.

VI. CONSOLIDATION

53. A key goal of this proceeding is to reduce interference among stations in the existing AM band. This section, presenting the second prong of our three-prong plan to improve AM, explores changes to non-technical policies and rules intended to motivate broadcasters to reduce interference in that band. These changes include: (1)

granting tax certificates to AM licensees who receive payment from other licensees to surrender their licenses; (2) relaxing our multiple ownership rules to permit a licensee signficantly reducing interference to co-channel or adjacent channel stations to own AM stations whose 5 mV/m contours overlap; and (3) permitting little or no duplication of programming by commonly owned AM and FM stations serving the same area.

54. *Voluntary Arrangements.* Section 1071 of the Internal Revenue Code, 26 U.S.C. §1071, permits the Commission to issue tax certificates to the seller of a regulated property when that sale will give effect to a new or changed Commission policy concerning the ownership and control of radio broadcasting stations. These certificates enable a seller of broadcast property to defer any capital gain it realizes by acquiring a "qualifying replacement property" within two years of the sale or by reducing the basis of other depreciable property. The Commission has in the past used tax certificates to encourage, *inter alia*, voluntary divestitures of grandfathered ownership interests inconsistent with changes to its multiple ownership rules and broadcast property sales to minorities.

55. Voluntary agreements among licensees under which one licensee may pay another to surrender its license or to reduce interference to the first station can significantly improve the overall quality of reception by reducing congestion and interference in the existing AM band. For this reason, in MM Docket No. 89-46, the Commission has today adopted rules to encourage licensees to reach such agreements. But, as one commenter in that proceeding observed, the tax consequences of receiving compensation in such situations could discourage a licensee from entering into such agreements.[28] We now tentatively conclude that we should issue tax certificates to licensees receiving payment from other licensees to surrender their licenses, thereby reducing congestion or interference in the existing AM band. We seek comment on this tentative conclusion and ask commenters to discuss several related issues including:

(a) whether the use of tax certificates in this case would be consistent with our past uses of this tool;

(b) what are the tax implications of voluntary license surrender agreements, *i.e.*, how could they be structured to constitute a sale of property under 26 U.S.C. §1071;

(c) whether we should require a showing that interference will be reduced by some prescribed amount as a prerequisite to our issuing the certificate; and,

(d) when that certificate should issue.

We also seek comment on whether we should also issue tax certificates to licensees receiving payment from other licensees to reduce their service area. In particular, in this regard, we seek comment on whether and how such an agreement to reduce coverage would constitute a sale of property falling within the scope of 26 U.S.C. §1071 and how any tax certificate would apply in such a situation.

56. We are also concerned that parties filing contingent applications as part of a voluntary arrangement may find their applications mutually inconsistent with other applications, contingent or not. If clusters of contingent arrangements become entangled in this way, it could be years before the comparative hearing process can resolve which proposals should be approved. Both private and public interests would suffer because the improvements to AM service promised by these arrangements would be delayed. We propose three measures to avoid this outcome. First we would require that no application to move to a frequency in the expanded band be part of any package of contingent applications associated with a voluntary agreement. We would also give the proponents of mutually exclusive clusters of applications a period of sixty days to resolve their conflicts and to file modified proposals curing them. That period would run from the date we issue a public notice identifying their conflict. Finally, recognizing the potential for delay inherent in the comparative hearing process, we propose instead of having comparative evidentiary hearings to use a simple, objective criterion to select between or among mutually exclusive clusters of contingent applications unable to resolve their conflicts in the allotted time. This approach would be similar to the one followed in awarding licenses in the Instructional Television Fixed Service.[29] Because we find it to be consistent with our primary goal in this proceeding, the improvement of the AM broadcast service, we propose to use the measure of net interference reduction associated with each cluster of contingent applications as the decisive criterion. We seek comment on these measures and any others we might use to reduce and to resolve quickly and fairly conflicts among groups of contingent applications designed to improve the AM service.

57. *Common Ownership of AM Stations with Overlapping Contours.* In October 1988, we relaxed Section 73.3555(a) of our rules to prohibit cognizable ownership interests in two or more commercial AM stations if their predicted or measured 5 mV/m groundwave contours overlap.[30] We now propose to relax the rule even more if this would help reduce interference in the existing AM band. We tentatively conclude that we should consider waiving the contour overlap rule, on a case-by-case basis, to permit common ownership of two commercial AM stations with overlapping 5 mV/m contours if an applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany that common ownership. Simultaneous broadcasting of the same program on both stations would be permitted if the stations served substantially different markets or communities. In this case-by-case analysis, we would, of course, remain sensitive to the interests in viewpoint diversity and against undue market concentration that underlies the Commission's multiple ownership rules. To ensure that arrangements actually lead to the promised interference reduction, we would require that applicants submit, along with their waiver requests, a contingent application for the major or minor facilities change needed to achieve the reduction.

58. We request comment on our tentative conclusion that relaxing the AM contour overlap rule for licensees agreeing to reduce interference to co-channel and adjacent channel stations would lead to the model AM operations we seek. We ask commenters concluding that such a relaxation would further our goals to discuss: (a) how much interference reduction we should require to merit waiver of the multiple ownership rule; (b) whether the number of square kilometers of contour overlap permitted should correspond to the number of square kilometers for which interference is reduced; and (c)

whether we should consider factors other than the number of square kilometers for which interference is reduced in deciding whether to permit such AM/AM combinations. Such additional factors would include effects on diversity and market concentration and might include: the classes of the stations involved; the extent of the overlap between their service contours; interference limitations in the signals of these stations; the relative audience shares or ratings of each; and how great would the costs be to applicants of making detailed proposals to reduce interference and to the Commission of reviewing such proposals. We also seek comment on the relative advantages and disadvantages of using the waiver process or an exception to our rules like that in place for overlapping television satellite stations to process requests for relaxing the contour overlap rule tied to interference reduction. Commenters should also address the implications of the simulcasting restriction.

59. *Possible Reimposition of AM - FM Nonduplication Rule*. Prior to 1964 there were no program duplication limits on co-owned AM and FM stations serving the same market. In that year the Commission began prohibiting FM stations from duplicating more than 50% of their programming from a co-owned AM station in the same local area.[31] The Commission had two objectives. The first was to foster development of the FM service by requiring separate programming of FM stations, which would encourage people to buy and use FM receivers. The second objective was to improve spectrum efficiency by reducing duplicate programming on two channels, both serving the same audience. In 1976 the Commission further limited the FM station in an AM-FM combination to not more than 25% duplication if either station served a community of more than 25,000 population.[32]

60. In 1986, citing three reasons for its action, the Commission deleted the program duplication rule in its entirety.[33] First, the rule's retention was no longer necessary for the purpose of promoting FM development. Second, its elimination could be expected to result in increased hours of operation since some stations in AM-FM combinations had shortened their broadcast day as one way to comply with the rule. Finally, its elimination would provide increased flexibility for licensees of AM-FM combinations to respond to economic forces, *i.e.*, by reducing operating costs for marginal AM stations.

61. The duplication of programming on two channels serving essentially the same audience can be an effective means of either assisting a fledgling service or propping up financially weak stations. However, its usefulness may be limited. Where established stations have experienced a steady decline in audience share and then resorted to program duplication as a way to reduce costs, we are not aware of any cases for which such measures have reversed the decline in audience share or established a permanent sound economic base. We request comment on the utility of program duplication as a means of aiding marginal broadcast operations.

62. We must also consider the fact that where a channel is licensed to a party for use at a particular location, other parties are prevented from using that channel and six adjacent channels at varying distances up to hundreds of kilometers. The licensed station will also cause an incremental increase in interference to other operating stations and will restrict the ability of other facilities to make modifications and improvements. Commenters are asked to address whether the preclusionary effect and the need to reduce interference in this context outweighs Commission policy as articulated in MM Docket No. 85-357.[34]

63. Given our objective of revitalizing the AM service by the year 2000 through the measures proposed in this *Notice*, we request comment on whether the continuation of program duplication will aid in or hinder the attainment of that objective. Parties favoring retention of our current policy should present data supporting the public interest and economic benefits of program duplication. Interested parties disfavoring the continuation of program duplication are requested to present proposals that, ideally, would provide incentives for the elimination of this practice on a voluntary basis. We also seek comment on what, if any, exceptions should be allowed if program duplication were to be precluded, such as, for example, where the amount of overlap of the AM and FM service areas is small.

VII. MIGRATION TO THE EXPANDED BAND

64. *Introduction*. The third prong of our master plan for improving the AM service calls for moving existing AM stations into the expanded band. This would meet two objectives: first, it would reduce interference and congestion in the existing AM broadcast service; and second, it would offer a prompt method for establishing service in the expanded band.

65. We are convinced that significant improvement in existing AM service depends on the willingness of stations causing heavy interference to migrate to the expanded band. We recognize that the decision to migrate to the expanded band would depend on a licensee's particular circumstances. Many existing stations use relatively uncomplicated antenna systems during daytime hours but switch to elaborate multi-tower systems for nighttime operation. For such licensees, the expanded band may present an attractive alternative to the frustrations and expenses associated with their existing operations and offer the opportunity for improved signal quality in a relatively noise free environment. We anticipate that most operations in the expanded band would require simple antenna systems and relatively small antenna sites. Some expanded band licensees may even choose to diplex at an existing tower site, requiring minimal site costs. As a result, many stations could profit significantly by moving to the expanded band and selling their existing real estate holdings which, in some cases, are valued in excess of station values. Also, a licensee may find migration a feasible alternative if the service area of an expanded band facility compares favorably with its existing operation.

66. Our definition of Model I service was created to provide for 25 to 30 stations per channel. We expect expanded band stations to be spaced relatively far apart in the heartlands but closer (by using directional antennas) along the coast and near urban areas. This would ensure licensees relatively large service areas with concomitantly low interference levels.

67. At the *en banc* hearing last November, some suggested that channels in the expanded band should be reserved for use by daytimers, minorities and public radio stations. Although the arguments for such reservations are not without merit, we believe that the most efficient and effective use of the expanded band is to resolve the interference problems of the existing band. The expanded band is limited to only ten channels. Were we to reserve one or

more channels for the exclusive use of daytimers, minorities or public radio stations, we would severely limit our ability to meet the pressing needs of the entire AM broadcast service. It is our belief that the reassignment of a station to the expanded band will benefit both that station and, by reducing interference and congestion, those stations remaining in the existing band. We have no reason to believe that our proposed approach will promote or disadvantage one segment of the industry more than others though we would consider any evidence to the contrary that commenters may provide. Recognizing that some short term discomfort may be necessary to restore the long term health and overall good of the service, we have endeavored to make our approach neutral and objective. Commenters may wish to address how set-asides could be reconciled with our goal.

68. *Travelers Information Stations*. The frequencies 530 and 1610 kHz are assigned in the Local Government Radio Service for the operation of Travelers Information Stations (TIS). These stations are used to transmit noncommercial voice information pertaining to traffic and road conditions, traffic hazard and travel advisories, rest stops and service stations, directions, availability of lodging and local points of interest. Local governments share these two frequencies with federal agencies providing similar services. TIS must be located at least 15 km outside the 0.5 mV/m daytime contour of any AM station operating on a first adjacent channel (540 or 1600 kHz). The field strength of a TIS must not exceed 2 mV/m at a distance of 60 meters from a cable antenna or 1.5 km from a vertical antenna.

69. In the *Third Notice of Inquiry* in Gen. Docket No. 84-467,[35] we suggested moving the TIS on 1610 kHz to 1700 kHz. We did not believe that TIS could provide effective service on 1610 kHz because of potential problems with future Canadian and Mexican stations operating on that channel and domestic broadcast operations on the upper adjacent channels of the existing AM band. Repeating this proposal, the subsequent *Fourth Notice of Inquiry* posed a series of questions regarding technical standards, protection and similar matters.[36]

70. When we proposed to move TIS to 1700 kHz, we were still anticipating that new AM stations, assigned in either the conventional manner or through an option described as "national licensing," would fill the expanded band. Because our goal was simply to devise an orderly and effective means for initiating new service and because we anticipated that the density of stations per channel would be greater than we now propose, we did not believe that exclusive allocation of one channel to TIS would materially affect the expansion of the AM service.

71. The master plan presented in this docket is based upon two premises radically different from those in earlier proceedings associated with improving the AM service. These premises are (1) that interference and congestion must be reduced and (2) that this reduction can be achieved only if existing stations migrate to the expanded band. While we appreciate the value of having a special service uniquely identified with its own channel, we do not believe that it justifies exclusive use of 10% of the expanded band's limited capacity, especially when the proposal we make today could offer TIS more opportunities for growth than would be achievable on a single channel.

72. Accordingly, we propose to modify Parts 2 and 90 to permit TIS to be assigned to any of the ten channels between 1605 and 1705 kHz. Because the density of broadcast stations will be comparatively low, with co-channel spacings ranging from 400 to 800 kilometers (249 to 497 miles), we believe that TIS will have greater opportunities for more stations, nationwide as well as in any given market, than would be possible with a single exclusive channel. Our proposal will permit TIS to easily avoid adjacent channel conflicts. Finally, this proposal may obviate the need for many existing TIS to vacate 1610 kHz. We seek comment on this and also on whether it is operationally feasible for TIS to be assigned to any of the existing channels between 535 and 1605 kHz.

73. Because TIS would be intermingled with broadcast stations, several issues relating to protection must be resolved. Toward this end, we seek comment on an appropriate co-channel separation standard. At the present time the rules provide that the transmitting site of a TIS must be located at least 15 km outside the 0.5 mV/m daytime contour of any broadcast station operating on the first adjacent channel. We seek such an administratively simple rule for co-channel separations. Also, in light of our proposal to increase the broadcasting adjacent channel protection ratio to 16 dB we seek information as to whether the current TIS standard should be modified.

74. The rules provide that TIS are authorized on a secondary basis to stations authorized on a primary basis in the band 1605-1705 kHz. Since broadcast stations will be authorized on a primary basis, we must determine how we will resolve incompatibilities where broadcast stations are assigned to markets where TIS are already operational. We pose three options:

> (1) A TIS must change frequency, at its own expense, if it is predicted to cause interference to a broadcast station. The change in frequency would not be required until the broadcast station became operational.
>
> (2) A TIS must change frequency, at its own expense, only if it causes actual interference to a broadcast station.
>
> (3) A TIS must change frequency if it is predicted to cause interference or if it causes actual interference to a broadcast station but only if the broadcast station bears the cost of the frequency change.

We seek comment on these options and on any other rules needed to ensure that TIS and broadcasting can effectively share the band.

75. *Eligibility*. We have tentatively concluded that the public interest will be served best by using the expanded band to improve the quality of AM service by lessening interference.[37] Because of severe congestion in the existing band that limits clear reception of many stations, we have tentatively concluded that, at least initially, the additional spectrum should not generally be open to new applicants. However, we contemplate that once the transition has been completed, new applicants may apply for unused capacity in the expanded band under the same rules and regulations governing other applicants for new AM stations.

76. We tentatively find that we can lawfully impose this temporary restriction on eligibility to apply for a frequency in the expanded band. In *Ashbacker* the Supreme

Court held that Section 309 of the Communications Act[38] requires the Commission to consider all mutually exclusive applications at the same time. It stated, however, that the Commission may define the class of eligible applicants.[39] Thus, the parties that must be afforded an opportunity for a comparative hearing are only those eligible under criteria established by the Commission. Subsequently, in *Storer Broadcasting*, the Supreme Court held that the Commission may by general rule establish eligibility standards prior to denial of an application.[40] We have limited or declined to consider competing applications in several other contexts when we found that this would promote the public interest.[41] Similarly, in this proceeding we propose to limit the initial class of eligible applicants to existing AM licensees. In light of the public interest benefits set forth above, defining the class of eligible applicants in this manner is consistent with *Ashbacker* and with those other proceedings in which we have limited the eligible class to those with specific characteristics. We seek comment on our tentative conclusions regarding eligibility criteria for a slot in the expanded band.

77. *Preferred Migrators*. Because we are unable to forecast the demand for migration to the expanded band, we must consider procedures to deal with a demand that may exceed the capacity. In developing such procedures, we focus our efforts on minimizing interference and maximizing high quality audio service. Since congestion in the existing band is the direct cause of most of the interference that has degraded AM service, we must conclude that there are too many stations in the existing AM band. If the heaviest contributors of interference migrated from the cluttered existing band to the now signal-free surroundings of the expanded band, the quality of the former could improve substantially. Thus, we believe that those existing licensees who by moving to the expanded band would most reduce interference and congestion should be preferred applicants for slots in that band.[42]

78. Several medium size cities in or adjacent to major metropolitan areas now lack a local fulltime aural station. This situation arose many years ago because of the dominance of nearby larger cities. These larger cities received all available AM and FM frequencies - the medium size cities were overlooked. The expanded band offers an opportunity to change this. We propose to consider ahead of all other daytime-only applicants, the applications of stations proposing to migrate to the expanded band that would also provide a first local fulltime aural service to cities with populations of 100,000 or more. Because the migration of these stations would not reduce nighttime interference in the existing band, we would consider these applicants only after our initial processing of all full-time station applicants.

79. *Options - Allotments or Assignments*. The method we now use to assign stations in the existing band would enable us to maximize the number of stations assigned to a single channel. This method would require each applicant to custom design its technical parameters like frequency, power and antenna systems to protect existing assignments. Another method would assign stations at predetermined distances with generally fixed technical parameters. The distance separating stations would depend upon the minimum service desired. Under the latter approach, specific channel allotments usually would be separated by prescribed distances and thus protected from interference. This approach would limit full use of channels compared to our assignment method. It would, however, offer several advantages over our present approach. First, most stations would, if anything, be better protected, assuring that each could offer its listeners a high quality, interference free service. Second, this system, by its nature, would give licensees flexibility in selecting antenna sites. Finally, this system would be relatively simple to administer, in part because it would avoid the "daisy chains" that could cause application processing to proceed at a glacial pace.

80. We tentatively find that the second method is more likely to produce the high quality service we seek for the expanded band. By making this band attractive to existing licensees, this method will also encourage migration and thus lead to an improved AM service in the existing band. For this reason we tentatively conclude that such a method is preferable to the traditional assignment method. We recognize, however, that because of the technical characteristics of the AM signal, AM broadcasting does not lend itself easily to such an approach. We also realize that the urban areas most likely to produce migraters are also likely to accommodate few allotments if we regularly space stations. For these reasons we tentatively conclude that a method incorporating flexible station separations would lead to optimal results in the expanded band.

81. *Sample Allotment Plan*. In order to demonstrate how we will develop a plan in response to migration demand, we will collect letters of intent from existing AM stations interested in migrating to the expanded band. Since the capacity of the expanded band is limited, we intend to rank stations based upon the qualitative improvement to the existing band which will result from the eventual deletion of these station's current assignments. This process would enable us to determine objectively how the potential areas should be established and the number of channels that we should allot to each area. We intend to group them by geographic area, including all interested stations within eighty kilometers of the worst interferers within the same area.

82. After ranking the stations, we would derive a sample allotment plan. First, we would evaluate the feasibility of using channels 1610, 1620 or 1630 in each area based upon our technical standards and applicable international agreements. The location of existing stations on channels 1580, 1590 and 1600, and an allotment area's proximity to international borders will determine the outcome of this evaluation. In order to provide high quality service in the expanded band, we would require all allotments in a sample plan to be at least 800 kilometers (497 miles) from the nearest co-channel allotment area, and 200 kilometers (124 miles) from the nearest adjacent-channel allotment area, except in Zone 1 (as shown in Figure 1 of section 73.699 of the Commission's Rules). There we would permit separations of 400 and 200 kilometers (249 and 124 miles), subject to the provision of adequate protection. We propose the reduced co-channel separation in Zone 1 because we anticipate a high demand for channels in this area, and with the understanding that licensees could use simple directional antennas to achieve desired protection levels. We propose the same adjacent-channel separations for all allotments, including those in Zone 1, because simple directional antennas could not give adjacent-channel skywave protection in addition to co-channel skywave protection.

83. After the first three channels have been considered, we would extend the draft allotment plan to cover use of channels 1640, 1650 and 1660, with reference to alloted use of 1610, 1620 and 1630 and with the same technical and separation requirements. At this time, potential allotment areas with the highest aggregate improvement factors would be considered for a second allotment. Finally the last four channels would be considered in the same way. We will publish the sample allotment plan when the *Report and Order* is issued in this proceeding; it would show a plan based on letters of intent only. The final plan would reflect actual petitions filed after this proceeding is concluded and would not necessarily coincide with the sample plan. We urge all interested parties to file nonbinding letters of intent. The sample plan will consider only letters of intent filed on or before **October 15, 1990.**

84. *Selection of Migrating Stations.* We propose to announce a filing window during which licensees of stations in the existing band would file petitions for authority to move to the expanded band.[43] Our initial examination of the petitions will determine whether more than one seeks to operate in the same area. If a petition is filed for a particular area and no competing petitions have been filed, that petitioner would be eligible to receive an allotment. If, however, a number of petitioners have filed for allotments in the same area and that number exceeds the number of available allotments, we will need selection criteria to choose among them.

85. Rather than using comparative evidentiary hearings,[44] we propose to rank petitioners based upon the extent to which the migration of each would improve service quality in the existing band.[45] Our proposed way to do this would be to rank them based upon the total magnitude of the interference attributable to each. This would grant the highest preference to those creating the heaviest interference, but not necessarily to those creating interference to the greatest number of stations.

86. A station contributes to the congestion of a given channel if it precludes other stations from modifying their facilities to achieve model AM service areas. The additional freedom for other stations to improve facilities if a congesting station migrated would be another measure of the extent to which a station's moving would improve service quality. To achieve our ultimate goal of establishing a model service area for as many stations as possible, we propose to rank stations seeking to migrate to the expanded band by using a composite measure that combines both ways of ranking the station.

87. The method used to rank stations must permit a comparison of stations that operate in the existing band on different channels and with different power levels. This calls for a ranking factor that reflects each station's unique operating situation. We propose such a ranking factor defined as the ratio of the nighttime interference caused by a station to the amount of nighttime service that station provides. We believe this ratio captures for each station the net effect on its channel of its migration. To determine the numerator of the ratio, we would first evaluate the coverage of each station to which the petitioner causes nighttime interference. The petitioner's interference would be excluded from the RSS calculation for each of the other stations and their expanded coverage areas would then be recomputed. The total of these area increases would be the numerator of the improvement ratio. The denominator of the ratio would be the nighttime interference-free area of the petitioner's station. These ratios, called "improvement factors", would be used to rank all stations in the AM band.[46] Frequency bias would be minimized since each ratio is normalized on the station's own channel before it is used to compare one station with another. We seek comment on our proposal for ranking stations entitled to a first preference, and in particular whether the factors we have identified are those most likely to assure improved service in the existing band.

88. The station with the highest ratio would be the one causing the greatest diminution of nighttime service to other stations relative to the amount of service it provides. Among all stations causing interference, this station would receive the highest ranking.

89. If no full-time station petitioned for a particular area, we would consider petitions from existing daytime-only stations. Among these petitioners, we propose to give first priority to stations located within the 0.5mV/m 50% contours of Class I stations and which are licensed to serve communities with populations of 100,000 or more that currently lack a local full time aural service. Second priority would go to other daytime-only stations that under the current rules cannot operate at night. Lastly, for the remaining daytime-only stations, the ranking would be based on permitted nighttime power calculated in accordance with current Section 73.182 of the rules in order of least to most. Again, we propose to apply these objective criteria without resort to comparative hearings.

90. We would require petitioners to support their request with sufficient technical information to enable us to determine how the station should be ranked. Unlike our present application process, no showing would be required for the proposed new operation; the technical exhibits would address only the petitioner's currently licensed station.[47] We would assume that all candidates would operate model I facilities, see paragraph 5, *supra*, unless restricted by international agreements. In its decision granting petitions, the Commission will specify the frequency to be used and any additional technical details that are pertinent, such as the need to operate at power levels departing from the 1 kW norm and/or use of directional antenna systems. To receive an assignment, successful petitioners would then be required to file within 60 days a complete application using FCC Form 301.

91. *Ownership Limitations and Transition Period.* Recognizing that the AM broadcast service has had declining revenues, profits, audience ratings, and station sale prices over the past several years,[48] we asked in the *Fourth Notice of Inquiry* whether the national ownership limits[49] or the local ownership restrictions should apply to expanded band stations.[50] We also asked whether we should waive these rules for any entity licensed in the expanded band for a five year (or longer) period of time.

92. Commenters addressing these issues agreed that there should be new ownership rules for the expanded band.[51] We agree with these commenters, that at least for a transitional period of time, we should permit individuals or entities to own and operate a commercial AM station in the existing band and one in the expanded band in the same area as long as the license for the existing band station would ultimately be surrendered. This could ultimately help reduce congestion and interference in the existing AM band and, at the same time, enable existing AM licensees to improve service quality by moving to the expanded band.

93. We cannot predict how quickly wideband receivers will become widely available. Nor can we forecast audience listening patterns or potential advertising revenues for stations operating in the expanded band. These uncertainties make operation in that band a financially risky undertaking. For this reason we propose to add a note to the multiple ownership rules to permit, without waiver request or other public interest showing, the simultaneous ownership and operation of an expanded band and an existing band station in the same area for a transitional period of time. At the end of this period, operation in the existing band would no longer be authorized. Because joint ownership will only be permitted for a transition period and because the number of radios capable of receiving stations in the expanded band will, at first, be small, we also propose to allow a licensee to duplicate without limit on the expanded band channel the programming carried over its existing AM band channel. We seek comment on our proposal to adopt a new note to the multiple ownership rules permitting the simultaneous ownership and operation of a commercial AM station in the 535-1605 kHz band and a commercial AM station in the expanded band with overlapping 5 mV/m contours, for a transitional period of time, after which the existing band station would be surrendered. We also seek comment on the length of this transitional period; should it be linked to the penetration of fullband receivers locally, regionally, or nationally? We also seek comment on our proposal to permit unlimited program duplication between the existing and the expanded band.

94. We also propose a note to our national ownership rule to permit an existing AM licensee to own and operate an expanded band station during this transitional period even if this gives the licensee a cognizable ownership interest in excess of our national ownership limits. We seek comment on how the national ownership rule should treat a licensee owning the maximum number of AM stations permitted by our national ownership rules that seeks to construct a station in the expanded band. Our preliminary view is that we should establish this limited exception to the national ownership rules for a transitional period of time since this would facilitate the development of the expanded band.

95. We propose that following construction, the permittee would apply for a license to operate the expanded band station and, if all the terms of the construction permit have been met, a license for that facility would issue. The license would issue, however, conditional on the eventual surrender of the existing band license. During the interim we would prohibit the licensee from operating on one of its authorized frequencies and selling its operation on the other frequency. If a station is authorized to move to the expanded band, and later decides to operate on only its former frequency, we would require it to surrender its expanded band authorization and its allotment would be made available to other eligible applicants. Once a station is licensed to operate in the expanded band and the transition period has expired, the existing band station would go silent; new petitioners for its former existing band frequency would then have to meet the standards in effect at the time of their filing. They would not "inherit" the previous station's radiation rights.

VIII. RECEIVER MODEL

96. We believe that this document is an appropriate forum for comments on the characteristics of a model AM receiver. We must continually make several assumptions about average receiver performance as we develop allotment and assignment criteria. Rather than attempt to base these criteria on the widely varying characteristics of actual receivers which change from year to year, we believe the service would benefit if we settled on a single hypothetical model possessing desirable and yet affordable performance attributes. We note that the National Association of Broadcasters and the Electronic Industry Association are refining the specifications they have developed for a high quality AM radio. We believe that their work and our adoption of a "reference" model will induce manufacturers to make a significant improvement in the performance of AM tuners. We are convinced that, as the service improves, good quality, wideband receivers will become common. By "good quality" we mean receivers with a standardized frequency response that complements the broadcast audio preemphasis limitation defined in NRSC-1.[52] These receivers would also reject frequencies outside the bandwidth of the transmitted signal to which they are tuned. Generally, giving licensees protection from adjacent channel interference should encourage manufacturers to make and consumers to buy wideband receivers. These radios should improve the quality of the AM signal reaching a listener's ear and thus enhance AM broadcasters' ability to compete.

97. We propose to use as our planning assumptions the draft recommendation of the National Radio Systems Committee. We intend to treat them as recommendations to the receiver industry, *not* requirements. Few commenters to the *Inquiry* believed that we should establish mandatory receiver standards. Although we have heard of many creative and worthwhile improvements, we are also aware that they embody tradeoffs among features, performance and cost. Attempts to incorporate these in compulsory standards would reduce choices and raise prices. Consequently, we agree with the majority that there is now no reason for such standards and we do not intend to mandate receiver standards.

98. Use of the NRSC-2 emission limitation will reduce the occupied RF bandwidth of AM broadcast transmitters from 30 kHz to a nominal 20 kHz, leading to a reduction in adjacent channel interference levels and to improved reception quality for the AM service.[53] After we adopted the NRSC-2 emission standard, the NRSC developed, and circulated for approval, a proposed set of AM receiver technical parameters.[54] While the NRSC has not yet given final approval to it, the draft proposal calls for receivers of substantially higher quality than those available today. We seek comment on whether the NRSC proposal is a complete and acceptable standard for our purposes. Are there other requirements that we should assume? For example, should we assume that receivers can select, automatically or manually, between wideband and narrowband transmission so that skywave service is protected from adjacent channel interference? If so, should characteristics of the narrowband operation also be specified? Would it be desirable to include recommendations that do not directly relate to interference protection criteria, such as that all receivers with FM stereo capability should also have AM stereo capability? What assumptions are valid regarding industry implementation of the draft NRSC standards and the transition to wideband receivers?

99. We are considering developing a list of those receivers that satisfy the minimum criteria needed for the good quality receiver discussed above. We propose that such a list be updated and released as a public notice every six months. The intent of this list would be to help all parties identify those receivers with technical characteristics complementing the improved transmissions we are working to achieve.

IX. OTHER MATTERS

100. In a *Petition For Rule Making* filed February 2, 1989, Crawford Broadcasting Co., requests changes to Section 73.182 of the rules regarding protection of Class I stations. Specifically, Crawford proposes that we: (1) eliminate consideration of secondary service, (2) adopt a protected contour of 2.0 mV/m groundwave, and (3) use 50% skywave curves for interference calculations. In a *Petition for Rule Making* filed May 9, 1989, Lloyd B. Roach, Inc., proposes changes to the post-sunset authority rules, Section 73.99, to allow fulltime Class III stations their authorized pre-sunrise power level during the period between local sunset and 6:00 p.m. Both of these proposals, in essence, request a relaxation in interference protection standards and would, if adopted, cause increased levels of interference to numerous AM stations resulting in a general reduction in existing service in the AM band. Since this is inconsistent with the major theme of this proceeding, interference reduction, we will dismiss the instant petitions. Any comments these petitioners wish to file in this proceeding will be fully considered by the Commission.

101. In addition to proposing rules covering the subjects discussed herein, we believe a general revision of the AM rules is appropriate at this time. Therefore, some of the rules proposed in Appendix 5 relate to subjects not discussed in this proceeding but which, if adopted, would update, correct or clarify the current rules. In view of this, we welcome comments and suggestions on any other changes to the rules that would produce an improved version of the AM rules.

102. The impetus for these changes has come from many sources. In general, the proposed rules which involve modifications of existing procedure reflect the implementation of practices which are currently in use and in effect have already superseded the printed requirements. The need for such changes has been brought to our attention over time by broadcasters and their representatives, as well as by members of the Commission staff who deal with the daily administration of broadcasting functions. Two examples of this process can be seen in the changes proposed for Sections 73.150 and 73.152. Computerized methods in the area of directional antenna pattern calculation have dramatically reduced the amount of documentation needed in the application filing process. In reality much of the paperwork required for submission under Section 73.150 has not been demanded by the staff for many years. This fact and others are the subject of a Petition for Rule Making filed by Karl D. Lahm on April 28, 1989. In light of the above, several of Mr. Lahm's recommendations have been incorporated in the new text of Section 73.150 in Appendix 5.

103. The current language in Section 73.152 lacks sufficient specific directions regarding the filing of directional antenna augmentation applications. This has resulted in a set of instructions which the Commission staff has used internally and has over the years evolved into a policy. These guidelines are now included in the text of Section 73.152 to help reduce the number of amendments that must now be requested from applicants who initially seek excessively high levels of augmented radiation that are not consistent with our primary goal of maintaining spectrum efficiency. Further on the subject of pattern augmentation, we seek comment on the need to extend this procedure to directional antennas for stations that will operate in the frequency range 1605 to 1705 kHz. With the tendency toward the use of simple arrays along with the proposed reduced proof requirements for stations in this band, sufficient latitude may already be included to warrant the elimination of this added variable from directional pattern adjustment practices.

104. A number of changes are required to Part 2, Table of Frequency Allocations, Section 2.106 of the Rules[55] and to Part 90 of the Rules to implement the AM band expansion and to make new provisions for Travelers Information Stations (TIS) as proposed herein. They are also shown in Appendix 5 and generally reflect our proposals to use the expanded band for broadcast operations, to permit TIS to operate on any expanded band frequency, and to allow for continued operation of non-broadcast stations provided interference is not caused to broadcast stations.

105. On March 29, 1990, we released an *Order* [56] that curtailed the filing of most applications for new or changed facilities. That action was taken so as to avoid compounding present difficulties with a continuing flow of applications based upon existing, possibly inadequate, standards. The *Order* included interim procedures that identified limited categories of applications which could continue to be filed. We believe that those procedures should be effective as long as this proceeding is open.

X. SUMMARY AND CONCLUSION

106. In this *Notice*, we have outlined our three-pronged attack on the problems confronting the existing AM service. We have proposed changes to our technical standards, changes to some non-technical requirements, and have described our planned use of the expanded band. Such a combined approach, we believe, is necessary to improve the AM service. This proceeding covers a wide range of issues with no simple answers. We request comments on the issues and proposals addressed in this *Notice* and encourage full participation of station licensees, their engineering and legal representatives and receiver manufacturers. The comments should specifically address the issues identified herein. We will, however, consider all relevant comments regarding improvement of the AM service.

XI. ADMINISTRATIVE MATTERS

107. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix 6. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility

Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

108. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

109. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 CFR 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

110. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2) if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation must provide, on the same day it is submitted, two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary and must be labeled or captioned as an *ex parte* presentation.

111. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide, on the day of the oral presentation, an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206.

112. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **October 15, 1990,** and reply comments on or before **November 14, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

113. Authority for the actions proposed above is contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303.

114. For further information on this proceeding, contact William H. Hassinger, Mass Media Bureau, (202) 632-6460, or Larry W. Olson, Policy and Rules Division, Mass Media Bureau, (202) 632-6955.

XII. ORDERING CLAUSES

115. IT IS ORDERED, That, pursuant to §5(c)(1) of the Communications Act as amended, 47 U.S.C. §155(c)(1), and §0.201(d)(2) of the Commission's rules, 47 C.F.R. §0.201(d)(2), the Mass Media Bureau shall prepare and the Bureau Chief shall sign orders terminating MM Docket No. 88-376, MM Docket No. 88-509 and MM Docket No. 88-511.

116. IT IS FURTHER ORDERED, That, pursuant to §4(i) of the Communications Act as amended, 47 U.S.C. §154(i), and §1.401(e) of the Commission's rules, 47 C.F.R. §1.401(e), the Petitions for Rule Making filed by Crawford Broadcasting, Co., and Lloyd B. Roach, Inc. ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *Final Acts of the Regional Administrative Radio Conference to Establish a Plan for the Broadcasting Service in the Band 1605-1705 kHz in Region 2, Rio de Janeiro, 1988.*

[2] *See Report and Order*, MM Docket No. 89-46, FCC 90-139 (adopted April 12, 1990).

[3] *See Report on the Status of the AM Broadcast Rules*, RM-5532 *(Report)*.

[4] *See Review of Technical Assignment Criteria for the AM Broadcast Service*, MM Docket No. 87-267, 2 FCC Rcd 5014 (1987).

[5] *See Improved Methods for Calculating Skywave Field Strength in the AM Broadcast Band*, MM Docket No. 88-508, 3 FCC Rcd 6431 (1988); *Enhanced Nighttime Operation for Class II-S and Class III-S AM Stations*, MM Docket No. 88-509, 3 FCC Rcd 6444 (1988); *Improved Methods for Calculating Groundwave Field Strength in the AM Broadcast Band*, MM Docket No. 88-510, 3

FCC Rcd 6577 (1988); *Review of the Methods for Calculating Nighttime Protection for Stations in the AM Broadcast Service*, MM Docket No. 88-511, 3 FCC Rcd 6448 (1988); and, *Amendment of the Commission's Rules to Improve the Quality of the AM Broadcast Service by Reducing Adjacent Channel Interference and by Eliminating Restrictions Pertaining to the Protected Daytime Contour*, MM Docket No. 88-376, 3 FCC Rcd 5687 (1988).

[6] *See Policies to Encourage Interference Reduction Between AM Broadcast Stations*, MM Docket No. 89-46, 4 FCC Rcd 2430 (1989).

[7] Prior to the Conference's completion, the Commission adopted a *Fourth Notice of Inquiry* to expedite domestic implementation. In it, we posed important technical and procedural questions relating to: national licensing; eligibility criteria; technical criteria; processing procedures; and travelers information stations (TIS). *See Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605-1705 kHz Band*, General Docket No. 84-467, 3 FCC Rcd 2345 (1988). We treat relevant domestic issues associated with the expanded band in this proceeding. We will keep Gen. Docket No 84-467 open so that we can consider there any remaining international matters. The first three notices and reports were in preparation for the two sessions of the RARC, *see First Notice of Inquiry*, 49 Fed. Reg. 21419 (May 21, 1984); *First Report*, 50 Fed. Reg. 33844 (August 21, 1985); *Second Notice of Inquiry*, 50 Fed. Reg. 2077 (January 15, 1985); *Second Report*, 51 Fed. Reg. 8706 (March 13, 1986); *Third Notice of Inquiry*, 2 FCC Rcd 4295 (1987); and *Third Report*, 3 FCC Rcd 2345 (1988).

[8] The U.S. was alloted 1660, 1680 and 1700 kHz in southern Florida, 1620 and 1690 kHz in the Virgin Islands, and 1660 kHz in Puerto Rico.

[9] We are currently negotiating with Canada and Mexico regarding border area use of the expanded band. Our goal is to develop agreements preserving flexibility for our domestic decisions and minimizing the need to coordinate proposals.

[10] A standard station was defined as a fulltime station with power of 1 kW and a 90 degree omnidirectional antenna. Nonstandard powers up to 10 kW were permissible if other administrations were accorded protection equivalent to that given by a standard station.

[11] *See Report and Order*, MM Docket No. 88-508, FCC 90-137 (adopted April 12, 1990).

[12] *See Report and Order*, MM Docket No. 88-510, FCC 90-138 (adopted April 12, 1990).

[13] *Report and Order*, *supra* n. 2.

[14] *See Amendment of the Commission's Rules to Improve the Quality of the AM Broadcast Service by Reducing Adjacent Channel Interference and by Eliminating Restrictions Pertaining to the Protected Daytime Contour*, MM Docket No. 88-376, 4 FCC Rcd 3835 (1989); *recon denied*, 5 FCC Rcd 2598 (1990).

[15] The value of E_{min} represents the minimum field strength necessary to permit a desired reception quality in the presence of atmospheric and man-made noise.

[16] Atmospheric noise is created mainly by lightning discharges in thunderstorms. Man-made noise, found mainly in populous areas, arises from sources such as power lines, industrial machinery, ignition systems and appliances.

[17] *See First Report and Order*, Docket 87-389, 4 FCC Rcd 3493 (1989).

[18] *See Order Granting Limited Waiver*, FCC 83-361, released August 5, 1983, para. 20. *See also Third Report and Order*, Docket 20718, 50 FR 36061 (1985) and Erratum, Docket 20718, released August 29, 1985.

[19] *See Notice of Proposed Rule Making*, Docket 83-806, 51 FR 18004 (1986).

[20] *See Report and Order*, Docket 83-806, 2 FCC Rcd 6775 para. 10 (1987).

[21] *See* Comments of NAB on Sections I and IV of the *Notice of Inquiry in* MM Docket No. 87-267, Appendices A and B. Appendix A is the *Klein Study* and Appendix B is the *Angell Report*.

[22] Appendix 1 illustrates the effects of this proposal.

[23] The protection ratios used for this purpose would be 26 dB (co-channel) and 16 dB (first adjacent channel).

[24] The protection ratios used for this purpose would be 26 dB (co-channel) and 0 dB (first adjacent channel).

[25] Appendix 2 illustrates the effects of this proposal.

[26] Adoption of these proposals depends upon elimination of international restrictions and final action on our proposal regarding nighttime interference calculations. *See* paragraphs 38-41, *supra*.

[27] Thus, we propose that AM stations in the expanded band meet a minimum efficiency requirement of 282 mV/m at one km; use a quarter wave ground system; exhibit the antenna radiation characteristics of Figures 5 and 8, Section 73.190 of the rules; meet a one ohm loss resistance for directional antenna systems; and satisfy blanketing interference requirements.

[28] *See* Comments of Westinghouse Broadcasting Company, Inc., filed in MM Docket No. 89-46.

[29] *See Second Report and Order* in Amendment of Part 74 of the Commission's Rules and Regulations in regard to the Instructional Television Fixed Service, MM Docket No. 83-523, 101 FCC 2d 49 (1985), *on recon.*, 59 RR 2d (P & F) 1355 *(1986), remanded on other grounds sub nom. Telecommunications Research and Action Center*, 836 F. 2d 1349 (D.C. Cir. 1988), *Order and Second Further Notice of Proposed Rule Making* in MM Docket No. 83-523, 3 FCC Rcd 4564 (1988).

[30] An individual has a cognizable interest in a broadcast station if the individual is an officer, director, partner or owner of 5% or more of the voting stock of the station. *See* 47 C.F.R. § 73.3555, Notes 1 and 2.

[31] *See Report and Order* in Docket No. 15084, 45 FCC 1515 (1964).

[32] *See Report and Order* in Docket No. 20016, 59 FCC 2d 147 (1976).

[33] *See Report and Order* in MM Docket No. 85-357, 59 RR 2d 1611 (1986).

[34] As part of the record in this proceeding on this issue we intend to include the petition for rule making filed by Earl J. Weinreb on May 25, 1989 in which he requested that the Commission reimpose its AM-FM nonduplication rule.

[35] 2 FCC Rcd 4295 (1987), *see supra* n. 7.

[36] 3 FCC Rcd 4497 (1988), *see supra* n. 7.

[37] Consequently, we are abandoning the proposal for national licensing of the expanded band presented in the *Fourth Notice of Inquiry* in Gen. Docket No. 84-467. *See* n. 7, *supra*.

[38] 47 U.S.C. §309 (1988).

[39] *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327, 333 n.9 (1945).

[40] *United States v. Storer Broadcasting Co.*, 315 U.S. 192 (1956).

[41] *See, e.g., Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989); *Second Report and Order*, Gen. Docket No. 82-243, 4 FCC Rcd 2012 (1989).

[42] Because of the high density of Class IV stations on local channels, we believe that relatively little improvement would result if they were permitted to migrate. Accordingly, we propose initially to restrict Class IV stations from migrating to the expanded band.

[43] Since these petitions would be the initial step used by the Commission to identify and rank stations proposing to migrate, the information required to be filed would be limited to an accurate description of the existing band station (call sign, location and frequency) and the information necessary to rank the station (interference caused and service rendered).

[44] *See para. 56, supra.*

[45] Appendix 3 is a sample channel study - "AM Interference Improvement on a Sample Channel as a Result of a Random Migration Process".

[46] Appendix 4 demonstrates the application of this improvement factor showing results on a sample channel.

[47] *See* n. 43, *supra.*

[48] *See* Appendix 1 of the *Report on the Status of AM Broadcast Rules,* Mass Media Bureau Staff, April 3, 1986.

[49] *See* 47 C.F.R. § 73.3555(d). This rule generally prohibits cognizable ownership interests in more than 12 commerical AM stations.

[50] *See* 47 C.F.R. Section 73.3555(a) which currently prohibits an attributable ownership interest in two or more commercial AM stations if their predicted or measured 5 mV/m groundwave contours overlap.

[51] *See* Comments of NAB at 15-19; Comments of ABES at 17-18, Comments of Bonneville International Corporation at 7; and Comments of CBS at 9-11.

[52] *See* National Radio Systems Committee, NRSC-1 AM Preemphasis/Deemphasis and Broadcast Audio Transmission Bandwidth Specifications (ANSI/EIA-549-1988).

[53] Being greater than the separation of 10 kHz separating them, adjacent channel's transmitter bandwidths overlap. Reducing bandwidth will reduce that overlap, thus improving reception quality.

[54] *See* "Proposal for a Voluntary National Standard, Performance Recomendations for AM Broadcast Receivers," dated January 9, 1990 and circulated for publication approval on January 22, 1990. A copy has been placed in the Docket file.

[55] 47 C.F.R. §2.106.

[56] 5 FCC Rcd 2136 (1990).

SEPARATE STATEMENT OF COMMISSIONER ANDREW C. BARRETT

Re: Review of the Technical Assignment Criteria for the AM Broadcast Service MM Docket No. 87-267

I applaud the Commission's efforts to improve the AM radio service. Like most people of my generation, I grew up listening to AM radio as it entertained and informed me of events in my community and around the world. I understand the problems this service faces. These concerns were made all the more apparent during an all day En Banc hearing on AM improvement. I listened intently as some of those concerned with the fate of AM explained the steps that needed to be taken to assist in AM radio's survival. I fully support the policy goals enunciated in this Notice of Proposed Rule Making of transforming and revitalizing the AM radio service.

I write separately to voice my concerns over the allocation of channels on the expanded AM band (1605-1705 kHz). I understand the desire to remove interference and congestion from the existing AM band. However, the cure for AM may be the denial of opportunity for new entrants, including minorities, women and public broadcasters. I am concerned particularly about the plight of new minority broadcasters who could assist in adding to the level of diversity in broadcasting. Currently, minorities own only about 3 percent of the approximately 11,000 broadcast stations in this country. There is a need to ensure that minorities are not precluded from ownership opportunities as this Commission allocates new spectrum.

I recognize that through our actions today some existing minority and female broadcast station owners will be able to trade up to technically better facilities on the expanded AM band. This reality makes the denial of new entry for these groups more palatable. Yet, I also would hope that this Commission would continue to look favorably upon providing opportunities for minorities, women and those proposing non-commercial public radio on the expanded AM band in situations where (1) no broadcasters in the existing AM band request the allocation or (2) where none of the stations requesting the allocation would, in fact, reduce the interference or congestion on the existing AM band. Such a scheme would appear consistent with our efforts to improve AM radio. Moreover, it would assist us in accomplishing our long held goal of diversity of programming through media ownership.

Appendix 1

Proposed Changes in Daytime First Adjacent Channel Protection Standards

Protection ratios are used in conjunction with protected contours to determine the service and interference relationships between stations. The value of the protection ratio varies depending on the frequency relationship of the stations involved. In the case of stations separated by one channel, i.e., first adjacent channel, the current rules apply a value of 0 dB while the proposed rules specify a value of 16 dB. The significance of such a change in values is related to the contours that would be considered as "interfering". Using a protected contour of 0.5 mV/m, the interfering contour would be 0.5 mV/m for the current rules and 0.079 mV/m for the proposed rules.

Such a change in the protection ratio would, in effect, extend the distance to a station's interfering contour, thereby resulting in the depiction of interference where presently no interference is predicted. To demonstrate the effects of this change, Exhibit 1.1 shows the service and interference relationship of four stations. The subject station, KZIM, Cape Girardeau, MO (960 kHz) is located relatively close to first adjacent channel stations WMAY, Springfield, MO (970 kHz), KLIK, Jefferson City, MO (950 kHz) and KNEA, Jonesboro, AR (970 kHz). Note that under the present first adjacent channel standard, the revelant contours (0.5 mV/m) of the stations are no worse than tangential and that no interference to KZIM is predicted. However, when the protection standard is changed from 0 dB to 16 dB, a considerable area of interference to KZIM results (shown as cross-hatched areas).

As these stations are licensed entities, such an illustration is only useful to show the existence of interference in areas where licensees may have thought service was being provided. The proposed rules would not require existing stations to make modifications to correct these interference situations that have been identified based on a more accurate value of the protection ratio. However, the real benefit from these changes would be manifest where existing service is further protected from incursions which may come from proposals for new stations and increases in existing operations that would be allowed under the current standards. Finally, licensees may use this new information to identify areas under interference which may be the subject of future agreements to improve their service.

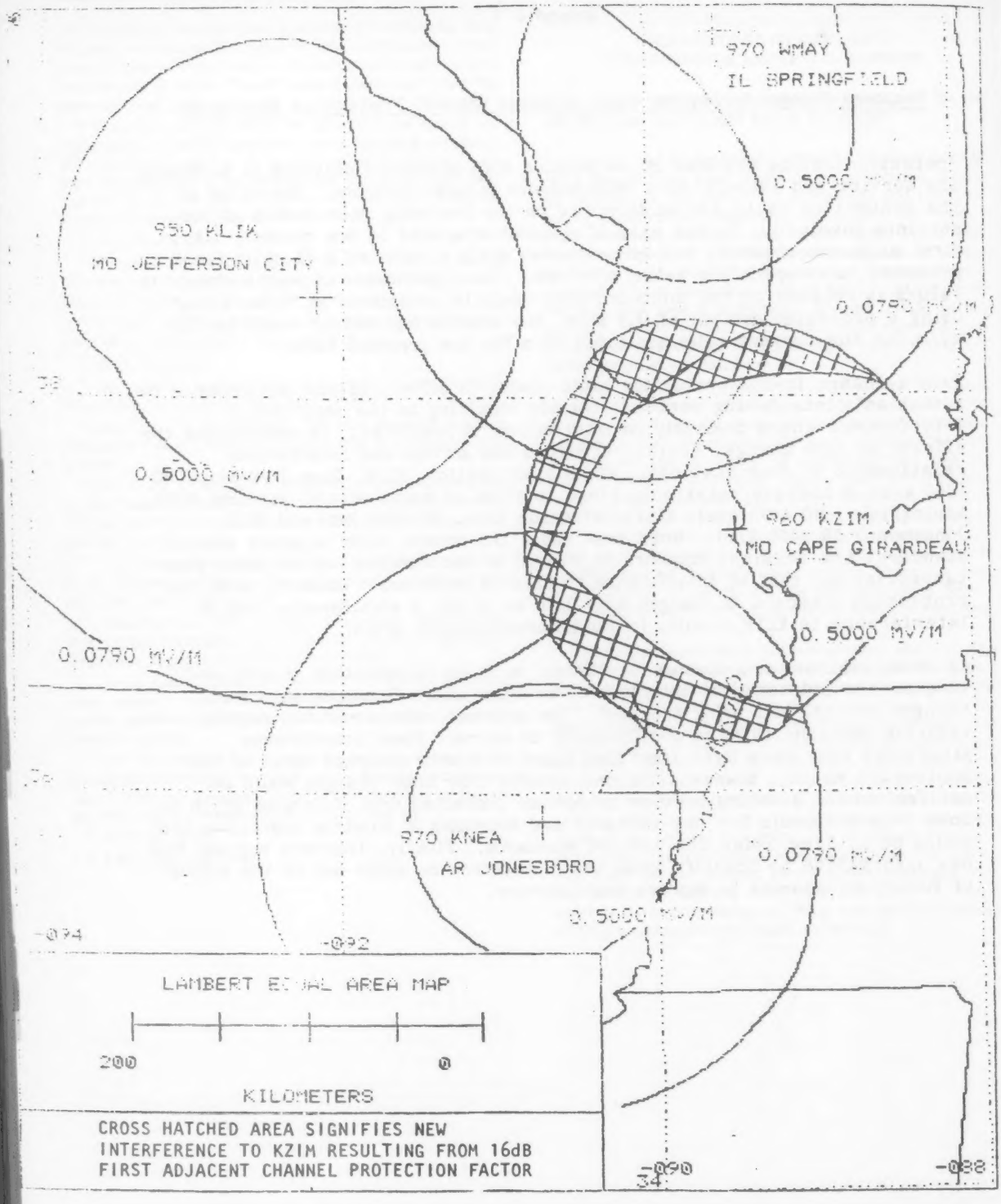
970 WMAY
IL SPRINGFIELD
0.5000 MV/M
950 KLIX
MO JEFFERSON CITY
0.0790 MV/M
0.5000 MV/M
960 KZIM
MO CAPE GIRARDEAU
0.5000 MV/M
0.0790 MV/M
970 KNEA
AR JONESBORO
0.0790 MV/M
0.5000 MV/M
-094
-092
-090
-088
LAMBERT EQUAL AREA MAP
200
0
KILOMETERS
CROSS HATCHED AREA SIGNIFIES NEW
INTERFERENCE TO KZIM RESULTING FROM 16dB
FIRST ADJACENT CHANNEL PROTECTION FACTOR

EXHIBIT 1.1

Appendix 2

Effects of Proposed Standards on AM Nighttime Operations

This proceeding proposes numerous revisions to the standards and methods we currently use to authorize new or modified AM nighttime operations. The effects of the proposed changes on AM stations relate to either service area calculations or interference protection requirements. It is believed that implementation of these changes would result in a more accurate depiction of nighttime service and interference and would require applicants to provide greater interference protection to existing stations.

To illustrate the effects of these changes, nighttime limits of stations on a sample frequency, 600 kHz, were calculated using our current rules (existing skywave curves, 50% exclusion and no consideration of first adjacent channel skywave interference) and our proposed rules (new skywave model, no exclusion, and a 16 db protection ratio for first adjacent channel skywave interference protection). A nighttime limit is the value of field strength of the desired signal necessary to overcome interfering signals from other undesired stations. Interference-free service is obtained within the contour determined by that nighttime limit. The higher the limit, the smaller the interference-free service area.

The Commission's current database was used as a basis for the calculations. Although the data may contain inconsistencies or errors originating from sources such as unstudied foreign notifications, their use appears reasonable for the purposes of this study. To show the relative locations and radiation characteristics of stations considered in this study, the attached maps (Exhibits 2.1, 2.2 and 2.3) indicate the location of nighttime stations on the sample frequency (600 kHz) as well as those on the first adjacent channels (590 and 610 kHz).

Table I shows the individual calculated nighttime limits imposed on KCLS from each of 94 interference sources and the "running" RSS which is computed as each new limit is considered. Twenty-six of those limits are from stations operating on KCLS's frequency; the remainder are those on 590 and 610 kHz. Since the current rules disregard adjacent channel signals, the calculated limits for stations 27 to 94 are zero as shown in the limit column. Note that the RSS in the current rules column is 11.0665 and remains unchanged regardless of the existence of additional signals from other stations. This is because the signal levels for stations 2 to 94 are less than 50% of the signal from station 1 and are therefore disregarded under our current RSS procedure. Data for stations 36 thru 93 were omitted since they have little or no effect on KCLS. The right hand columns are based on the proposed rules in which no signals are omitted. Note that the proposed method includes contributions from first adjacent channel stations.

Table II is a comparison of RSS nighttime limitation values for fulltime U.S. stations on 600 kHz and was compiled from calculations similar to Table I for the fifteen U.S. nighttime stations on 600 kHz. The current and proposed RSS are those derived from line 94 of Table I for each set of calculations. These RSS values are used to describe the interference-free service area of a station and, in general, are higher under the proposed standards. Root sum squared (RSS) values are computed for each station using, first, the present standards and then, the proposed standards. Resultant coverage areas are given along with the RSS values. The RSS values obtained using the proposed rules are a more accurate depiction of the actual coverage provided by the listed stations.

Table III compares the protection afforded KCLS under the current rules and the proposed rules. The table identifies stations and their limits to KCLS. Also shown is the channel relationship with KCLS. For instance, station KKLQ operates on the same channel (indicated by a zero in the Ch column) as KCLS and causes a limit of 11.07 mV/m to KCLS. This is the highest limit to KCLS and thus becomes the first limit in the KCLS RSS. Using the current 50% exclusion method, the next permissible limit would be 5.53 mV/m (11.07/2). Since the KKLQ limit is already included in KCLS's RSS, KKLQ would not be permitted to increase radiation in the direction of KCLS. This is shown by the 0.00 in the Increase Allowed column. Under the proposed rules, the KKLQ limit to KCLS is 10.71 mV/m which exceeds the permissible limit of 1.00 mV/m. Thus, KKLQ would be required to reduce its radiation by 10% towards KCLS if future modifications were made.

Table IV illustrates the effects of the new standards on the flexibility of KCLS. The table identifies the limits KCLS causes to other stations. The information is similar to that shown in Table III except that columns including bearing (Az.) and distance (Dist.) from KCLS are provided to aid in evaluating the restrictions on KCLS. For instance, KCLS operates on the next higher channel (indicated by a + in the Ch column) as KOJM and causes a limit of 0.00 mV/m to KOJM under the present rules which do not consider adjacent channel operations. The 50% RSS nighttime limitation of KOJM is 10.32 mV/m, giving a permissible limit of 5.16 mV/m. Under the current rules, KCLS is not restricted from increasing radiation towards KOJM. Under the proposed rules, the KCLS limit to KOJM is 0.4. mV/m, permitting an increase in radiation towards KOJM of 2.5 times its present value.

Table I

Interference (Limits) to KCLS

Current Rules				Proposed Rules			
#	Call	Limit (mV/m)	RSS (mV/m)	#	Call	Limit (mV/m)	RSS (mV/m)
1	KKLQ	11.0665	11.0665	1	KKLQ	10.7148	10.7148
2	KSJB	4.0606	11.0665	2	KSJB	3.4090	11.2441
3	KIIX	3.9254	11.0665	3	KROD	3.0939	11.6620
4	KROD	3.4717	11.0665	4	WMT	2.8653	12.0088
5	KTBB	3.0378	11.0665	5	KTBB	2.8426	12.3406
6	WMT	2.7196	11.0665	6	KIIX	2.7494	12.6432
7	KHTE	2.5158	11.0665	7	KSUB	2.3309	12.8563
8	XEDN	2.1771	11.0665	8	WREC	2.2869	13.0581
9	KGEZ	1.9993	11.0665	9	XEDN	1.8504	13.1885
10	WREC	1.8324	11.0665	10	KRSO	1.8158	13.3129
11	CFQC	1.6554	11.0665	11	KFRC	1.8085	13.4352
12	CHRX	1.2896	11.0665	12	KHTE	1.7765	13.5522
13	XEMN	0.7169	11.0665	13	KAVL	1.7290	13.6620
14	XEBB	0.3780	11.0665	14	KZSS	1.6261	13.7585
15	XEGT	0.3606	11.0665	15	KVNU	1.5531	13.8458
16	XEZ	0.2666	11.0665	16	CFQC	1.4454	13.9211
17	WOKV	0.2053	11.0665	17	KGEZ	1.4371	13.9951
18	WSJS	0.1487	11.0665	18	CHRX	1.2204	14.0482
19	WICC	0.1105	11.0665	19	KAQQ	1.1036	14.0914
20	CFCT	0.1072	11.0665	20	XEHQ	0.9961	14.1266
21	WCAO	0.1011	11.0665	21	KCSJ	0.9918	14.1614
22	CBNA	0.0931	11.0665	22	KID	0.9240	14.1915
23	CFCH	0.0569	11.0665	23	WOW	0.8915	14.2195
24	CFCF	0.0520	11.0665	24	WDAF	0.8699	14.2461
25	CKCL	0.0447	11.0665	25	KLBJ	0.8615	14.2721
26	WTAC	0.0218	11.0665	26	XEBB	0.7649	14.2926
27	CKYL	0.0000	11.0665	27	XEMN	0.6968	14.3095
28	CHNL	0.0000	11.0665	28	XEPH	0.6028	14.3222
29	CJAT	0.0000	11.0665	29	XEGS	0.5451	14.3326
30	CHTM	0.0000	11.0665	30	XEZ	0.5398	14.3428
31	CKYQ	0.0000	11.0665	31	KTHO	0.5315	14.3526
32	CKTB	0.0000	11.0665	32	XEGT	0.5302	14.3624
33	CFLO	0.0000	11.0665	33	KYJC	0.5090	14.3714
34	CHNC	0.0000	11.0665	34	KUGN	0.4966	14.3800
35	CKRW	0.0000	11.0665	35	KILT	0.4747	14.3878
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	.	.	.		.	.	.
94	WLVA	0.0000	11.0665	94	CKYQ	0.0025	14.4281

Table II

Current versus Proposed RSS

		Current Rules		Proposed Rules	
Call	Location	RSS (mV/M)	Area (sq. mi.)	RSS (mV/M)	Area (sq. mi.)
KCLS	Flagstaff, AZ	11.067	278.5	14.428	179.7
KHTE	Redding, CA	10.552	498.3	12.418	395.4
KKLQ	San Diego, CA	2.724	29398.4	8.365	5528.7
KIIX	Wellington, CO	19.979	98.9	18.699	111.1
WICC	Bridgeport, CT	3.911	705.2	11.122	214.7
WOKV	Jacksonville, FL	11.285	2017.6	16.998	789.3
WMT	Cedar Rapids, IA	2.642	10725.6	9.291	2186.6
WCAO	Baltimore, MD	3.809	2570.0	12.082	668.8
WTAC	Flint, MI	9.053	329.6	21.002	84.9
KGEZ	Kalispell, MT	17.813	150.3	15.126	190.8
WSJS	Winston-Salem, NC	5.309	952.0	8.765	524.8
KSJB	Jamestown, ND	11.186	3259.8	9.871	4005.9
WREC	Memphis, TN	2.262	10228.3	9.038	2090.0
KROD	El Paso, TX	7.886	1330.0	14.013	667.0
KTBB	Tyler, TX	21.800	306.6	21.793	306.7

Table III

How KCLS Restricts Other U.S. Stations

		Current Rules			Proposed Rules		
Call	Ch	Limit (mV/m)	Permiss Limit (mV/m)	Increase Allowed	Limit (mV/m)	Permiss Limit (mV/m)	Increase Allowed
KKLQ	0	11.07	5.53	0.00	10.71	1.00	**
KSJB	0	4.06	5.53	1.36	3.41	1.00	**
KROD	0	3.47	5.53	1.59	3.09	1.00	**
WMT	0	2.72	5.53	2.03	2.87	1.00	**
KTBB	0	3.04	5.53	1.82	2.84	1.00	**
KIIX	0	3.93	5.53	1.41	2.75	1.00	**
KSUB	-	0.00	5.53	*	2.33	1.00	**
WREC	0	1.83	5.53	3.02	2.29	1.00	**
KRSO	-	0.00	5.53	*	1.82	1.00	**
KFRC	+	0.00	5.53	*	1.81	1.00	**
KHTE	0	2.52	5.53	2.20	1.78	1.00	**
KAVL	+	0.00	5.53	*	1.73	1.00	**
KVNU	+	0.00	5.53	*	1.55	1.00	**
KGEZ	0	2.00	5.53	2.77	1.44	1.00	**
KAQQ	-	0.00	5.53	*	1.10	1.00	**
KCSJ	-	0.00	5.53	*	0.99	1.00	1.01
WDAF	+	0.00	5.53	*	0.87	1.00	1.15
KUGN	-	0.00	5.53	*	0.50	1.00	2.01
KILT	+	0.00	5.53	*	0.47	1.00	2.11
WOKV	0	0.21	5.53	26.95	0.35	1.00	2.85
WIOD	+	0.00	5.53	*	0.26	1.00	3.83
KDAL	+	0.00	5.53	*	0.25	1.00	4.04
KOJM	+	0.00	5.53	*	0.23	1.00	4.27
WSJS	0	0.15	5.53	37.21	0.22	1.00	4.52
WIP	+	0.00	5.53	*	0.14	1.00	6.93
WCAO	0	0.10	5.53	54.72	0.14	1.00	7.38
KARV	+	0.00	5.53	*	0.13	1.00	7.43
WICC	0	0.11	5.53	50.08	0.13	1.00	7.47
WCEO	-	0.00	5.53	*	0.12	1.00	8.31
WAFC	-	0.00	5.53	*	0.08	1.00	12.40
KONA	+	0.00	5.53	*	0.05	1.00	21.51
WMBS	-	0.00	5.53	*	0.03	1.00	37.58
WTAC	0	0.02	5.53	253.28	0.03	1.00	37.85
WJMS	-	0.00	5.53	*	0.02	1.00	46.17

* No restriction.

** No increase allowed. Modification would be permitted if limit is reduced at least 10%.

Table IV

How Other U.S. Stations Restrict KCLS

				Current Rules			Proposed Rules		
Call	Ch	Az. (°T)	Dist. (mi.)	Limit (mV/m)	Permiss Limit (mV/m)	Increase Allowed	Limit (mV/m)	Permiss Limit (mV/m)	Increase Allowed
KOJM	+	5.8	931.2	0.00	5.16	*	0.40	1.00	2.50
KSJB	0	36.1	1047.4	1.23	5.59	4.53	1.04	1.00	**
KIIX	0	41.9	522.0	5.44	9.99	1.84	3.84	1.00	**
KDAL	+	45.9	1286.4	0.00	5.89	*	0.21	1.00	4.87
KCSJ	-	58.7	446.6	0.00	5.79	*	1.48	1.00	**
WMT	0	60.4	1182.3	0.80	1.32	1.66	0.84	1.00	1.19
WTAC	0	61.9	1588.6	0.35	4.53	13.07	0.42	1.00	2.38
WKZO	-	62.8	1484.5	0.00	5.33	*	0.16	1.00	6.34
WROW	-	64.4	2082.8	0.00	4.77	*	0.06	1.00	15.44
WSNG	+	66.0	2120.1	0.00	6.88	*	0.06	1.00	15.82
WICC	0	67.2	2114.9	0.17	1.96	11.54	0.21	1.00	4.86
WDAF	+	69.4	974.0	0.00	1.61	*	0.39	1.00	2.54
WMBS	-	70.0	1770.0	0.00	2.82	*	0.11	1.00	9.31
WCAO	0	70.9	1929.4	0.21	1.90	9.23	0.28	1.00	3.62
WUSQ	+	71.5	1852.0	0.00	8.29	*	0.10	1.00	10.28
WLVA	-	75.5	1805.2	0.00	4.59	*	0.11	1.00	9.37
WSJS	0	78.7	1752.5	0.25	2.65	10.72	0.37	1.00	2.71
WROQ	+	80.8	1730.5	0.00	5.83	*	0.12	1.00	8.30
WREC	0	83.7	1221.3	0.63	1.13	1.80	0.78	1.00	1.28
KARV	+	84.2	1044.0	0.00	8.36	*	0.33	1.00	3.01
WZZK	+	87.6	1416.5	0.00	5.84	*	0.18	1.00	5.47
KZSS	+	90.8	283.3	0.00	4.27	*	2.16	1.00	**
WOKV	0	92.5	1764.9	0.22	5.64	26.10	0.37	1.00	2.70
WGNE	-	95.5	1550.6	0.00	4.67	*	0.15	1.00	6.72
KTBB	0	97.3	966.6	1.18	10.90	9.25	1.10	1.00	**
WAFC	-	99.3	1906.2	0.00	12.27	*	0.10	1.00	10.19
KROD	0	125.1	379.0	3.32	3.94	1.19	2.90	1.00	**
KKLQ	0	242.8	353.5	0.89	1.36	1.54	0.84	1.00	1.19
KFRC	+	290.3	617.8	0.00	1.96	*	0.49	1.00	2.04
KHTE	0	305.9	691.4	2.22	5.28	2.38	1.56	1.00	**
KUGN	-	318.8	862.9	0.00	8.08	*	0.38	1.00	2.64
KSUB	-	334.5	192.6	0.00	5.38	*	3.25	1.00	**
KGEZ	0	352.3	906.4	1.81	8.91	4.92	1.30	1.00	**
KVNU	+	358.2	448.5	0.00	4.77	*	1.45	1.00	**

* No restriction.

** No increase allowed. Modification would be permitted if limit is reduced at least 10%.

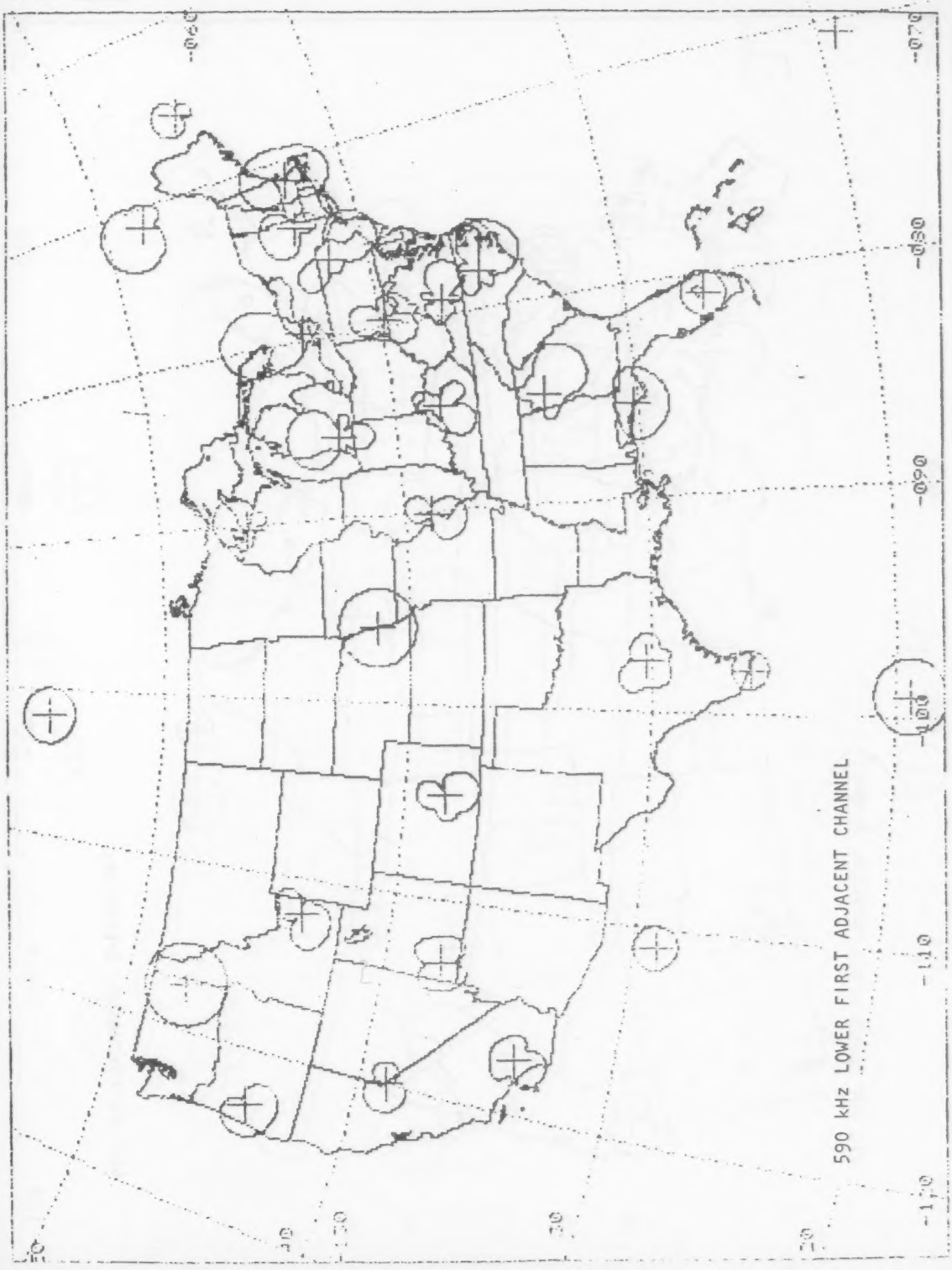


EXHIBIT 2.1

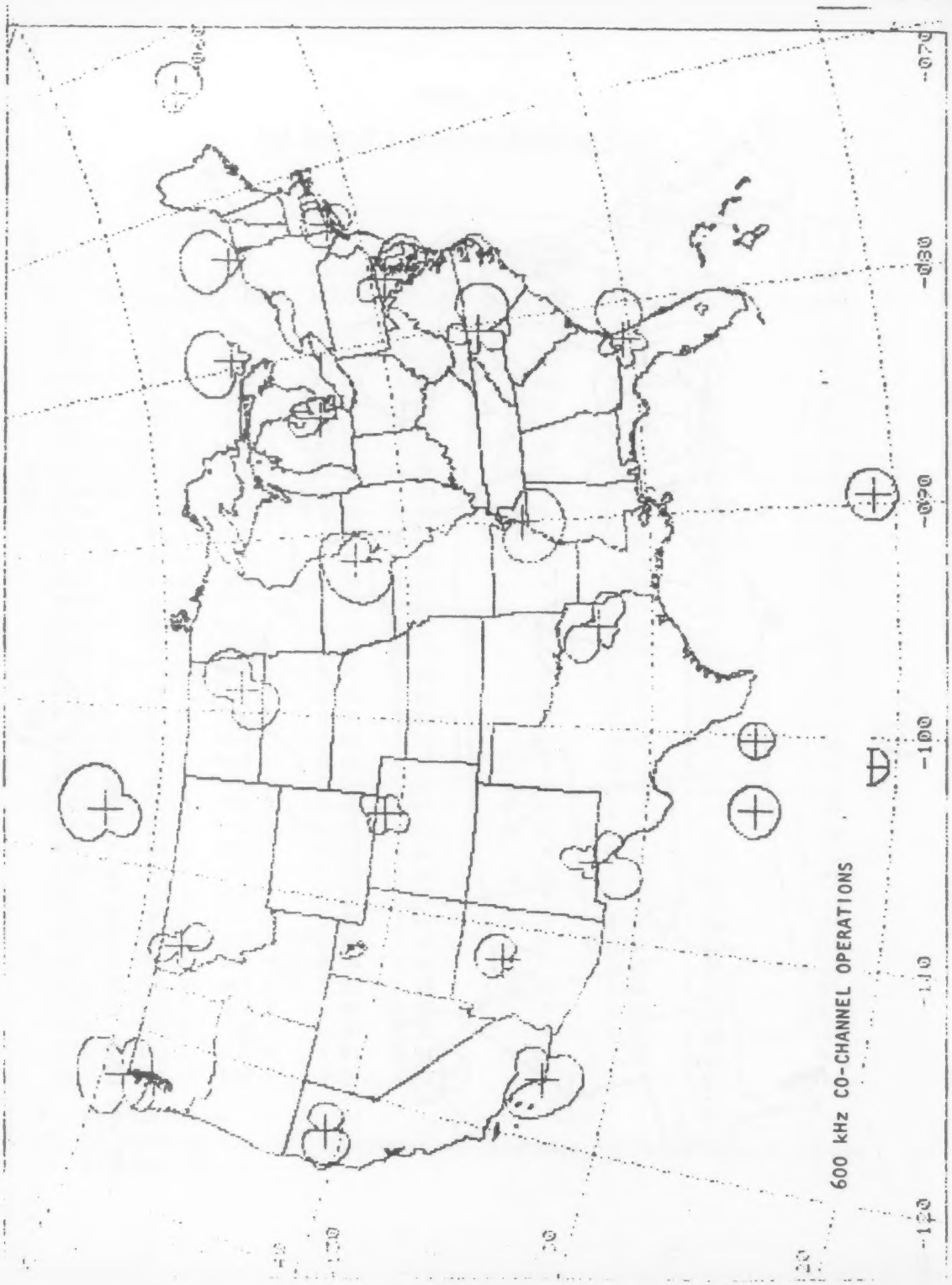


EXHIBIT 2.2

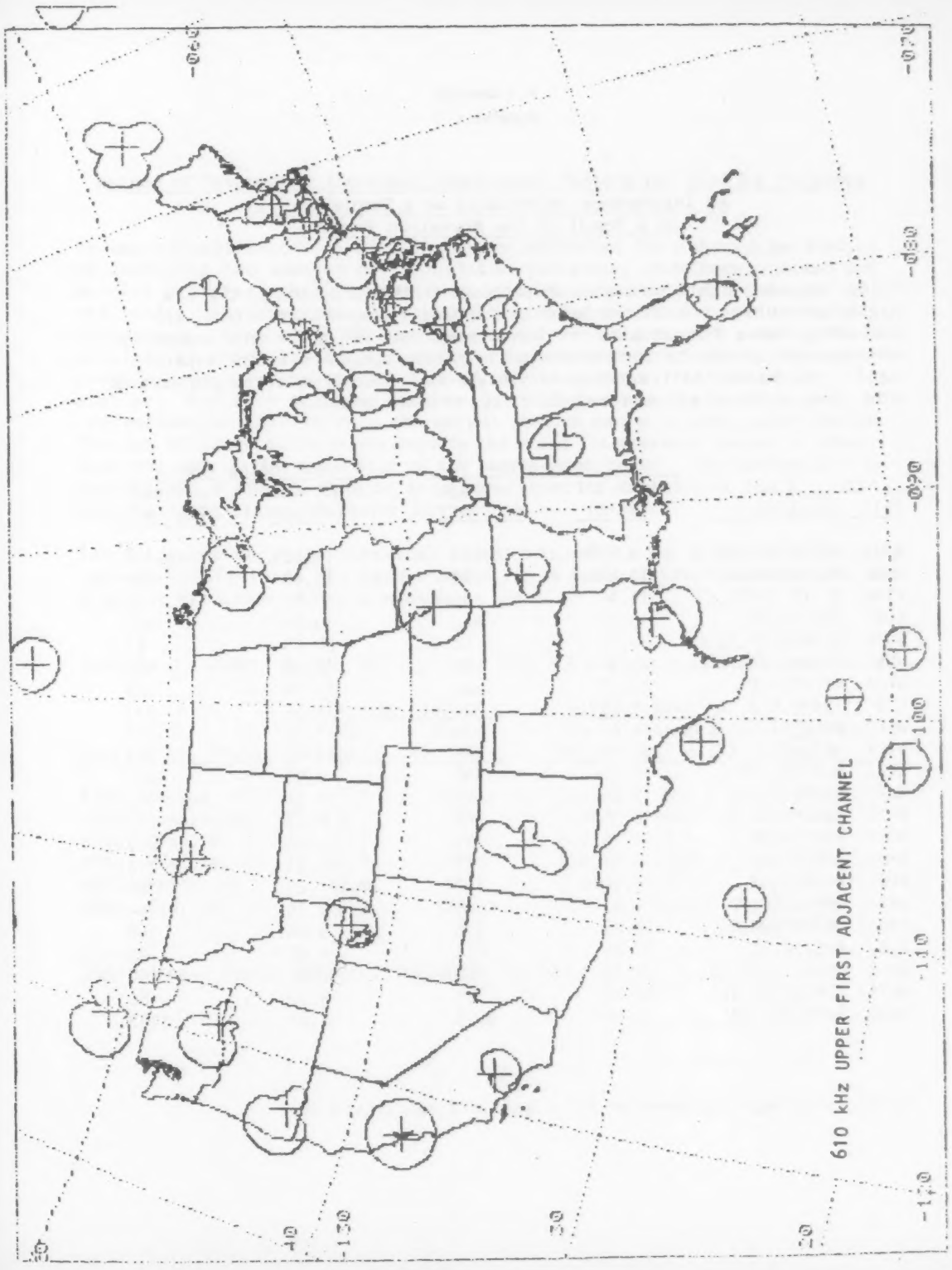


EXHIBIT 2.3

Appendix 3

AM Inteference Improvement on a Sample Channel as a Result of the Migration Process

Using the new nighttime standards proposed in this proceeding, the new nighttime curves, 0% RSS exclusion and adjacent channel protection, the following table demonstrates the improvement that can occur on a frequency when a station elects to transfer its nighttime operation to the expanded band. The Class III frequency of 590 kHz was randomly selected and station WOW, Omaha, NE was chosen because of its central location.

		Including WOW		Excluding WOW	
Call	Location	NightLimit (mV/m)	Coverage (sq. mi.)	Night Limit (mV/m)	Coverage (sq. mi.)
KHAR	ANCHORAGE,AK	0.828	18,098	0.827	18,118
KRSO	SAN BERNDNO,CA	13.68	282	13.58	285
KTHO	S. LK TAHOE,CA	16.94	68.6	16.87	69.0
KCSJ	PUEBLO,CO	13.01	462	10.40	681
WAFC	CLEWISTON,FL	24.09	68.2	24.03	68.5
WGNE	PANAMA CT,FL	13.10	409	12.78	432
WKHX	ATLANTA,GA	13.68	329	13.18	342
KID	IDAHO FLS,ID	15.25	320	14.94	331
WCEO	WOOD RIVER,IL	14.44	371	7.03	1241
WVLK	LEXINGTON,KY	17.58	185	16.85	197
WEEI	BOSTON, MA	10.02	998	9.97	1007
WJMS	IRONWOOD,MI	17.85	157	16.12	182
WKZO	KALAMAZOO,MI	10.35	468	8.27	652
WGTM	WILSON,NC	21.19	203	21.08	205
WROW	ALBANY,NY	16.37	175	16.31	176
KUGN	EUGENE,OR	17.30	187	17.27	188
WARM	SCRANTON,PA	9.43	1035	9.25	1054
WMBS	UNIONTOWN,PA	10.26	348	9.86	368
KLBJ	AUSTIN,TX	10.85	631	9.97	723
KSUB	CEDAR CITY,UT	12.79	566	12.50	590
WLVA	LYNCHBURG,VA	19.28	85	19.10	86
KAQQ	SPOKANE, WA	5.04	3643	4.84	3798

Note: Coverage was based on FCC Figure M-3 conductivities.

Appendix 4

Method of Determining Individual Improvement Factors for Ranking Purposes

An improvement factor is a ratio that is determined for a particular station by combining two aspects of its nighttime operation, interference caused and service provided, which, respectively, are the numerator and denominator of the ratio. The numerator is calculated by using the results of a two-step comparison. First, the RSS and associated coverage areas are computed for all stations to which the subject station causes interference. Next, the same computations are repeated but exclude any interference from the subject station. For each of these stations, the difference in the coverage area represents the interference the subject station causes to that other station. The sum of these differences depicts the total interference caused to other stations and is the numerator of the improvement factor. The denominator is the subject station's service area based upon its RSS value or the E_{nom} for the station's class, whichever is greater.

The following three hypothetical examples illustrate the method of calculating improvement factors. In each example, it is assumed that, besides the subject station, six other stations operate at night.

Example 1: KAAC, Maple, NE, 1310 kHz (RSS = 3.6 mV/m; area = 4072 sq. mi.)

	With KAAC		Without KAAC		
Call, City, State	RSS (mV/m)	Area (sq. mi.)	RSS (mV/m)	Area (sq. mi.)	Δ Area (sq. mi.)
KAXX, Cactus, AZ	3.7	801	3.7	801	0
KBXX, Tumbleweed, TX	9.1	774	7.4	1064	290
KCXX, Pine, WY	7.7	625	6.2	814	189
KDXX, Prairie, KS	14.7	172	8.2	452	280
WAXX, Peach, GA	3.9	911	3.9	911	0
WBXX, Elm, IL	5.9	1075	5.1	1225	150
				Total	909

Improvement Factor (KAAC): (909/4072) = 0.223

Example 2: KZAC, Maple, NE, 550 kHz (RSS = 2.6 mV/m; area = 22,700 sq. mi.)

Call, City, State	With KZAC RSS (mV/m)	With KZAC Area (sq. mi.)	Without KZAC RSS (mV/m)	Without KZAC Area (sq. mi.)	Δ Area (sq. mi.)
KXAX, Redwood, WA	11.6	501	11.6	501	0
KXBX, Aspen, CO	9.9	755	7.5	1195	440
KXCX, Birch, TX	9.5	830	9.0	910	80
WXAX, Chestnut, IL	13.6	346	5.2	1590	1244
WXBX, Cherry, MI	21.8	121	18.8	154	33
WXCX, Beechwood, KY	14.5	346	14.3	353	7
				Total	1804

Improvement Factor (KZAC): (1804/22700) = 0.0795

Example 3: WAAB, Sycamore, PA, 570 kHz (RSS = 8.7 mV/m; area = 855 sq. mi.)

Call, City, State	With WAAB RSS (mV/m)	With WAAB Area (sq. mi.)	Without WAAB RSS (mV/m)	Without WAAB Area (sq. mi.)	Δ Area (sq. mi.)
WXXA, Oak, PA	7.0	2206	6.5	2445	239
WXXB, Palm,FL	7.8	254	7.7	260	6
WXXC, Spruce, GA	9.3	1452	8.6	1590	138
WXXD, Dogwood, VA	7.3	373	6.9	401	28
WXXE, Azalea, KY	14.5	346	12.7	437	91
WXXF, Poplar, PA	6.8	444	6.8	444	0
				Total	502

Improvement Factor (WAAB): (502/855) = 0.587

As is evident in the above examples, the improvement factor of KAAC (1310 kHz) is greater than that of KZAC (550 kHz), both of which are located at Maple, NE. If the two stations were vying for a single available expanded band allotment in the vicinty of Maple, NE, the clear choice in this particular competition would be KAAC. This approach is effective in minimizing the comparative disadvantages attributable to operation on the higher frequencies.

Of the three stations evaluated above, the highest improvement factor belongs to WAAB, Sycamore, PA (570 kHz). This is not, however, significant in terms of selecting a candidate for expanded band migration in the Maple, NE area. Nevertheless, this result could be useful in prioritizing locations when establishing the overall allotment plan.

Appendix 5

Part 2 of Title 47 of the CFR is amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154 and 303

2. Section §2.106 is amended by revising the 535-1705 kHz band, by revising footnotes US221, US238, US299, NG128 and 480 and by removing footnote US237 as follows:

§2.106 Table of Frequency Allocations

* * * * *

United States table		FCC use designators	
Government	Non-government		
Allocation kHz	Allocation kHz	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
* * *	* * *	* * *	* * *
535-1705	535-1705 BROADCASTING.	RADIO BROADCASTING. (AM) (73). Alaska Fixed (80). Auxiliary Broadcasting (74). Private Land Mobile (90).	1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, 1700 kHz: Travelers information.
480	480		
US221	US221		
US299	US299 NG128		

* * * * *

UNITED STATES (US) FOOTNOTES

* * * * *

US221 The 1605-1705 kHz band is allocated to the mobile service on a secondary basis. Mobile use of the 525-535 and 1605-1705 kHz bands is limited to distribution of public service information from Travelers Information

Stations operating on 530, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690 or 1700 kHz.

* * * * *

US238 The 1605-1705 kHz band is allocated to the radiolocation service on a secondary basis.

* * * * *

US299 The 1615-1705 kHz band in Alaska is also allocated to the maritime mobile services and the Alaska fixed service on a secondary basis to Region 2 broadcast operations.

* * * * *

NON-GOVERNMENT (NG) FOOTNOTES

* * * * *

NG128 In the 535-1705 kHz band, AM broadcast licensees or permittees may use their AM carrier on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the 88-108 MHz band, FM broadcast licensees or permittees are permitted to use subcarriers on a secondary basis to transmit signals intended for both broadcast and non-broadcast purposes. In the 54-72, 76-88, 174-216 and 740-890 MHz bands, TV broadcast licensees or permittees are permitted to use subcarriers on a secondary basis for both broadcast and non-broadcast purposes.

* * * * *

INTERNATIONAL FOOTNOTES

* * * * *

480 In Region 2, the use of the 1605-1705 kHz band by stations of the broadcasting service is subject to the Plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

In Region 2, in the 1625-1705 kHz band, the relationship between the broadcasting, fixed and mobile services is shown in No. 419. However, the examination of frequency assignments to stations of the fixed and mobile services in the 1625-1705 kHz band under No. 1241 shall take account of the allotments appearing in the plan established by the Regional Administrative Radio Conference (Rio de Janeiro, 1988).

* * * * *

Part 73 of Title 47 of the CFR is amended as follows:

3. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

4. Section 73.14 is amended by removing the Note following the definition of AM broadcast channel, by removing the last sentence of the definition of AM broadcast station, by removing the definitions of Dominant station and Secondary AM station, and by revising the definitions of AM broadcast band, AM broadcast channel, AM broadcast station, Main channel, Maximum percentage of modulation and Stereophonic channel, to read as follows:

§73.14 AM broadcast definitions.

AM broadcast band. The band of frequencies extending from 535 to 1705 kHz.

AM broadcast channel. The band of frequencies occupied by the carrier and the upper and lower sidebands of an AM broadcast signal with the carrier frequency at the center. Channels are designated by their assigned carrier frequencies. The 117 carrier frequencies assigned to AM broadcast stations begin at 540 kHz and progress in 10 kHz steps to 1700 kHz. (See §73.21 for the classification of AM broadcast channels).

AM broadcast station. A broadcast station licensed for the dissemination of radio communications intended to be received by the public and operated on a channel in the AM broadcast band.

* * * * *

Main channel. The band of audio frequencies from 50 to 10,000 Hz which amplitude modulates the carrier.

Maximum percentage of modulation. The greatest percentage of modulation that may be obtained by a transmitter without producing in its output, harmonics of the modulating frequency in excess of those permitted by these regulations. (See §73.1570)

* * * * *

Stereophonic channel. The band of audio frequencies from 50 to 10,000 Hz containing the stereophonic information which modulates the radio frequency carrier.

* * * * *

5. Section 73.21 is revised to read as follows:

§73.21 Classes of AM broadcast channels and stations.

(a) Clear channel. A clear channel is one on which stations are assigned to serve wide areas. These stations are protected from objectionable interference within their primary service areas and, depending on the class of station, their secondary service areas. Stations operating on these channels are classified as follows:

(1) Class A station. A Class A station is an unlimited time station that operates on a clear channel and is designed to render primary and secondary service over an extended area and at relatively long distances from its transmitter. Its primary and secondary service areas are protected from objectionable interference from other stations on the same and adjacent channels. (See §73.182). The operating power shall not be less than 10 kW nor more than 50 kW. (Also see §73.25(a)).

(2) Class B station. A Class B station is an unlimited time station which is designed to render service only over a primary service area. Class B stations are authorized to operate with a minimum power of 0.25 kW (or, if less than 0.25 kW, an equivalent RMS antenna field of at least 141 mV/m at 1 km) and a maximum power of 50 kW.

(3) Class D station. A Class D station operates either daytime, limited time or unlimited time with nighttime power less than 0.25 kW and an equivalent RMS antenna field of less than 141 mV/m at one km. Class D stations shall operate with daytime powers not less than 0.25 kW nor more than 50 kW. Nighttime operations of Class D stations are not afforded protection and must protect all Class A and B operations during nighttime hours. New Class D stations will not be authorized.

(b) Regional Channel. A regional channel is one on which Class B and D stations may operate and serve primarily a principal center of population and the rural area contiguous thereto.

Note: Until the North American Regional Broadcasting Agreement (NARBA) is terminated with respect to the Bahama Islands and the Dominican Republic, radiation toward those countries from a Class B station may not exceed the level that would be produced by an omnidirectional antenna with a transmitted power of 5 kW, or such lower level as will comply with NARBA requirements for protection of stations in the Bahama Islands and the Dominican Republic against objectionable interference.

(c) Local channel. A local channel is one on which stations operate unlimited time and serve primarily a community and the suburban and rural areas contiguous thereto.

(1) Class C station. A Class C station is a station operating on a local channel and is designed to render service only over a primary service area that may be reduced as a consequence of interference in accordance with

§73.182. The power shall not be less than 0.25 kW, nor more than 1 kW. Class C stations that are licensed to operate with 0.1 kW may continue to do so.

6. Section 73.22 is removed.

7. Section 73.3570 is redesignated as Section 73.23 and revised to read as follows:

§73.23 AM broadcast station applications affected by international agreements.

(a) Except as provided in paragraph (b) of this section, no application for an AM station will be accepted for filing if authorization of the facilities requested would be inconsistent with international commitments of the United States under treaties and other international agreements, arrangements and understandings. (See list of such international instruments in §73.1650(b)). Any such application that is inadvertently accepted for filing will be dismissed.

(b) AM applications that involve conflicts only with the North American Regional Broadcasting Agreement (NARBA), but that are in conformity with the remaining treaties and other international agreements listed in §73.1650(b) and with the other requirements of Part 73, will be granted subject to such modifications as the FCC may subsequently find appropriate, taking international considerations into account.

(c) In the case of any application designated for hearing on issues other than those related to consistency with international relationships and as to which no final decision has been rendered, whenever action under this section becomes appropriate because of inconsistency with international relationships, the applicant involved shall, notwithstanding the provisions §§73.3522 and 73.3571, be permitted to amend its application to achieve consistency with such relationships. In such cases the provisions of §73.3605(c) will apply.

(d) In some circumstances, special international considerations may require that the FCC, in acting on applications, follow procedures different from those established for general use. In such cases, affected applicants will be informed of the procedures to be followed.

8. In Section 73.24, the Note following paragraph (b) is removed, the last sentence of paragraph (e) is removed, paragraph (i) is removed, paragraph (h) is redesignated as paragraph (i) and revised, a new paragraph (h) is added, and paragraph (j) is revised to read as follows:

§73.24 Broadcast facilities; showing required.

* * * * *

(e) That the technical equipment proposed, the location of the transmitter, and other technical phases of operation comply with the regulations governing the same, and the requirements of good engineering practice.

* * * * *

(h) That all persons are adequately protected from the energy radiated from the transmitting system in accordance with pertinent sections of OST Bulletin No. 65, October 1985, Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Radiation.

(i) That, in the case of an application for a Class B or D station on a clear channel, the proposed station would radiate, during two hours following local sunrise and two hours preceding local sunset, in any direction toward the 0.1 mV/m groundwave contour of a co-channel United States Class A station, no more than the maximum values permitted under the provisions of §73.187.

(j) That, for all stations, the daytime 5 mV/m contour encompasses the entire principal community to be served. For stations in the 535-1605 kHz band, 80% of the principal community is encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. For stations in the 1605-1705 kHz band, 50% of the principal community is encompassed by the 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. Class D stations with nighttime authorizations need not demonstrate such coverage during nighttime operation.

* * * * *

9. In Section 73.25, paragraphs (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii) and (a)(2)(iii) are removed, and the heading, paragraphs (a), (b), and (c) and the Note following paragraph (b) are revised to read as follows:

§73.25 Clear channels; Classes A, B and D stations.

* * * * *

(a) On each of the following channels, one Class A station may be assigned, operating with power of 50 kW: 640, 650, 660, 670, 700, 720, 750, 760, 770, 780, 820, 830, 840, 870, 880, 890, 1020, 1030, 1040, 1100, 1120, 1160, 1180, 1200, and 1210 kHz. In Alaska, these frequencies can be used by Class A stations subject to the conditions set forth in §73.182(a)(1)(ii). On the channels listed in this paragraph, Class B stations may be assigned. Class D stations that are licensed to operate on these channels may continue to do so.

(b) To each of the following channels there may be assigned Class A and B stations: 680, 710, 810, 850, 940, 1000, 1060, 1070, 1080, 1090, 1110, 1130, 1140, 1170, 1190, 1500, 1510, 1520, 1530, 1540, 1550, and 1560 kHz. Class D stations that are licensed to operate on these channels may continue to do so.

Note: Until superseded by a new agreement, protection of the Bahama Islands shall be in accordance with NARBA. Accordingly, a Class A, B or D station on 1540 kHz shall restrict its signal to a value no greater than 4 μV/m groundwave or 25 μV/m 10% skywave at any point of land in the Bahama Islands, and such stations operating nighttime (i.e., sunset to sunrise at the location of the U.S. station) shall be located not less than 650 miles from the nearest point of land in the Bahama Islands.

(c) Class B and D stations may be assigned on 540, 690, 730, 740, 800, 860, 900, 990, 1010, 1050, 1220, 1540, 1570, and 1580 kHz.

10. Section 73.26 is revised to read as follows:

§73.26 Regional channels; Class B and D stations.

(a) The following frequencies are designated as regional channels and are assigned for use by Class B and D stations: 550, 560, 570, 580, 590, 600, 610, 620, 630, 790, 910, 920, 930, 950, 960, 970, 980, 1150, 1250, 1260, 1270, 1280, 1290, 1300, 1310, 1320, 1330, 1350, 1360, 1370, 1380, 1390, 1410, 1420, 1430, 1440, 1460, 1470, 1480, 1590, 1600, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, and 1700 kHz.

(b) Additionally, in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands the frequencies 1230, 1240, 1340, 1400, 1450, and 1490 kHz are designated as Regional channels, and are assigned for use by Class B stations. Stations formerly licensed to these channels in those locations as Class C stations are redesignated as Class B stations.

11. Section 73.27 is revised to read as follows:

§73.27 Local channels; Class C stations.

Within the conterminous 48 states, the following frequencies are designated as local channels, and are assigned for use by Class C stations: 1230, 1240, 1340, 1400, 1450, and 1490 kHz.

12. In Section 73.28, paragraph (a) is removed, paragraph (b) is redesignated as paragraph (a) and revised to read as follows:

§73.28 Assignment of stations to channels.

(a) The Commission will not make an AM station assignment that does not conform with international requirements and restrictions on spectrum use that the United States has accepted as a signatory to treaties, conventions, and other international agreements. See §73.1650 for a list of pertinent treaties, conventions and agreements, and §73.23 for procedural provisions relating to compliance with them.

* * * * *

13. Section 73.29 is revised to read as follows:

§73.29 Class C stations on regional channels.

No license will be granted for the operation of a Class C station on a regional channel.

14. A new Section 73.30 is added to read as follows:

§73.30 Petition for authorization of an allotment in the 1605-1705 kHz band.

(a) Any party interested in applying for an AM broadcast station to be operated on one of the ten channels in the 1605-1705 kHz band must first file a petition for the establishment of an allotment to its proposed community of service. Each petition must include the following information:

(1) Name of community for which allotment is sought. (2) Station call letters. (3) Calculated improvement factor and supporting data (submitted only if petition is filed by an existing station intending to migrate from the 540-1600 kHz band. (See §73.35 for calculation method).

(b) If awarded an allotment, a petitioner will have sixty days from the date of public notice of selection to file an application for construction permit. (See §§73.24 and 73.37(e) for filing requirements).

Note 1: Until further notice by the Commission, the filing of these petitions is limited to licensees (Class C stations excluded) of existing AM stations operating in the 535-1605 kHz band. Selection among competing petitions will be based on interference reduction. The station demonstrating the highest value of improvement factor will be afforded the highest priority for an allotment, with the next priority going to the station with next highest value, and so on, until available allotments are filled.

Note 2: The Commission will periodically evaluate the progress of the movement of interfering stations to the 1605-1705 kHz band with a view to determining whether the 1605-1705 kHz band should be administered on an allotment or assignment basis. The Commission will later develop permanent procedures for use of the 1605-1705 kHz band by existing station licensees and others.

Note 3: Existing Class B stations are given first consideration for selection as described in Note 1. In the event that an allotment availability exists for which no fulltime station has filed a relevant petition, such allotment may be awarded to a licensed daytime only station. If more than one daytime-only station were to apply for this migration opportunity, the following priorities will be used in the selection process:

(a) First priority. A station located within the 0.5 mV/m-50% contour of a U.S. Class A station and licensed to serve a community of 100,000 or more, for which there exists no local fulltime aural service.

(b) Second priority. Any other daytime-only station that can not operate at night.

(c) Third priority. Any station, not eligible under 1 and 2 above, that could be allowed the least amount of power under the terms of Section 73.182.

15. Section 73.35 is added to read as follows:

§73.35 Calculation of improvement factors.

(a) A petition for an allotment in the 1605-1705 kHz band filed by an existing fulltime AM station licensed in the 535-1605 kHz band must be accompanied by the station's calculated improvement factor. (See §73.30) Improvement factors relate only to nighttime conditions and are based on two distinct considerations: (1) service area lost by other stations due to interference caused by the subject station, and (2) service area of the subject station. These considerations are represented by a ratio. To determine the numerator of the ratio (first consideration), calculate the RSS and associated service area of the stations (co- and adjacent channel) to which the subject station causes nighttime interference. Next, repeat the RSS and service area calculations excluding the subject station. The cumulative gain in the above service areas is the numerator of the ratio. The denominator (second consideration) is the subject station's interference-free service area. The value of this ratio will constitute the petitioner's improvement factor. Notwithstanding the requirements of §73.153, for uniform comparisons and simplicity, measurement data will not be used for determining improvement factors and FCC figure M-3 ground conductivity values are to be used exclusively in accordance with the pertinent provisions of §73.183(c)(1).

16. Section 73.37 is revised to read as follows:

§73.37 Applications for broadcast facilities, showing required.

(a) No application will be accepted for a new station if the proposed operation would involve overlap of signal strength contours with any other station as set forth below in this paragraph; and no application will be accepted for a change of the facilities of an existing station if the proposed change would involve such overlap where there is not already such overlap between the stations involved:

Frequency separation (kHz)	Contour of proposed station (Classes B, C and D) (mV/m)	Contour of any other station (mV/m)	
0	0.005	0.1	(Class A)
	0.025	0.5	(Other classes)
	0.5	0.025	(All classes)
10	0.079	0.5	(All classes)
	0.5	0.079	(All classes)
20	2	25	(All classes)
	25	2	(All classes)
30	25	25	(All classes)

(b) In determining overlap received, an application for a new Class C station with daytime power of 250 watts, or greater, shall be considered on the assumption that both the proposed operation and all existing Class C stations operate with 250 watts and utilize non-directional antennas.

(c) If otherwise consistent with the public interest and subject to Section 316 of the Communications Act, an application requesting an increase in the daytime power of an existing Class C station on a local channel from 250 watts to a maximum of 1 kW, or from 100 watts to a maximum of 500 watts, may be granted notwithstanding overlap prohibited by paragraph (a) of this section. In the case of a 100 watt Class C station increasing daytime power, the provisions of this paragraph shall not be construed to permit an increase in power to more than 500 watts, if prohibited overlap would be involved, even if successive applications should be tendered.

(d) In addition to a demonstration of compliance with the requirement of paragraphs (a), and, as appropriate, (b), and (c) of this section, an application for a new AM broadcast station, or for a major change (see §73.3571(a)(1) of this chapter) in an authorized AM broadcast station, as a condition for its acceptance, shall make a satisfactory showing, if new or modified nighttime operation by a Class B station is proposed, that objectionable interference will not result to an authorized station, as determined pursuant to §73.182(l) of this chapter.

(e) An application for an authorization in the 1605-1705kHz band which has been selected through the petition process (See §73.30) is not required to demonstrate compliance with (a), (b), (c), or (d) of this section. A conditional grant of such an operation will be issued under the presumption of compliance with those sections and successful accomplishment of the terms of such station's construction permit shall be considered as sufficient justification for issuance of license.

Note 1: In the case of applications for changes in the facilities of AM broadcast stations covered by this section, an application will be accepted even though overlap of field strength contours as mentioned in this section would occur with another station in an area where such overlap does not already exist, if: (1) The total area of overlap with that station would not be increased; (2) there would be no net increase in the area of overlap with any other station; and (3) there would be created no area of overlap with any station with which overlap does not now exist.

Note 2: The provisions of this section concerning prohibited overlap of field strength contours will not apply where: (1) the area of overlap lies entirely over sea water: or (2) the only overlap involved would be that caused to a foreign station, in which case the provisions of the applicable international agreement, as identified in §73.1650, will apply. When overlap would be received from a foreign station, the provisions of this section will apply, except where there would be overlap with a foreign station with a frequency separation of 20 kHz. In the latter case the provisions of the international agreement will apply in lieu of this section.

Note 3: In determining the number of "authorized" aural transmission facilities in a given community, applications for that community in hearing or otherwise having protected status under specified "cut-off" procedures shall be considered as existing stations. In the event that there are two or more mutually exclusive protected applications seeking authorization for the proposed community it will be assumed that only one is "authorized."

Note 4: A "transmission facility" for a community is a station licensed to the community. Such a station provides a "transmission service" for that community.

17. In Section 73.53, paragraph (b)(1) is revised and a new Note is added after paragraph (c) to read as follows:

§73.53 Requirements for authorization of antenna monitors.

* * * * *

(b) * * *

(1) The monitor shall be designed to operate in the 535-1705 kHz band.

* * * * *

Note: In (b)(1) above, the requirement that monitors be capable of operation in the 535-1705 kHz band shall apply only to equipment manufactured after July 1, 1991. Use of a monitor in the 1605-1705 kHz band which is not approved for such operation will be permitted pending the general availability of 535-1705 kHz band monitors if a manufacturer can demonstrate, in the interim, that its

monitor performs in accordance with the standards in this section on these 10 channels.

18. In Section 73.68, paragraph (d)(3) is revised to read as follows:

§73.68 Sampling systems for antenna monitors.

* * * * *

(d) * * *

(3) If that portion of the sampling system above the base of the towers is modified or components replaced, a partial proof of performance shall be executed in accordance with §73.154 subsequent to these changes. The partial proof of performance shall be accompanied by common point impedance measurements made in accordance with §73.54.

* * * * *

19. In Section 73.69, paragraph (d)(4) is revised to read as follows:

§73.69 Antenna monitors.

* * * * *

(d) * * *

(4) If it cannot be established by the observations required in paragraph (d)(2) of this section that base current ratios and monitoring point values are within the tolerances or limits prescribed by the rules and the instrument of authorization, or if the substitution of the new antenna monitor for the old results in changes in these parameters, a partial proof of performance shall be executed and analyzed in accordance with §73.154.

* * * * *

20. In Section 73.72, paragraph (a) is revised to read as follows:

§73.72 Operating during the experimental period.

(a) An AM station may operate during the experimental period (the time between midnight and sunrise, local time) on its assigned frequency and with its authorized power for the routine testing and maintenance of its transmitting system, and for conducting experimentation under an experimental authorization, provided no interference is caused to other stations maintaining a regular operating schedule within such period.

* * * * *

21. In Section 73.88, a new Note is added after the introductory language to read as follows:

§73.88 Blanketing interference.

* * * * *

Note: For more detailed instructions concerning operational responsibilities of licensees and permitees under this section, see §73.318 (b), (c) and (d).

22. Section 73.99 is revised to read as follows:

§73.99 Presunrise service authorization (PSRA) and Postsunset service authorization (PSSA).

(a) To provide maximum uniformity in early morning operation compatible with interference considerations, and to provide for additional service during early evening hours for Class D stations, provisions are made for presunrise service and postsunset service. The permissible power for presunrise or postsunset service authorizations shall not exceed 500 watts, or the authorized daytime or critical hours power (whichever is less). Calculation of the permissible power shall consider only co-channel stations for interference protection purposes.

(b) Presunrise service authorizations (PSRA) permit:

(1) Class D stations operating on Mexican, Bahamian, and Canadian Class A clear channels to commence PSRA operation at 6:00 a.m. local time and to continue such operation until the sunrise times specified in their basic instruments of authorization.

(2) Class D stations situated outside 0.5 mV/m-50% skywave contours of co-channel domestic Class A stations to commence PSRA operation at 6:00 a.m. local time and to continue such operation until sunrise times specified in their basic instruments of authorization.

(3) Class D stations located within co-channel 0.5 mV/m-50% skywave contours of domestic Class A stations, to commence PSRA operation either at 6:00 a.m. local time, or at sunrise at the nearest Class A station located east of the Class D station (whichever is later), and to continue such operation until the sunrise times specified in their basic instruments of authorization.

(4) Class B and D stations on regional channels to commence PSRA operation at 6.00 a.m. local time and to continue such operation until local sunrise times specified in their basic instruments of authorization.

(c) Extended Daylight Saving Time Pre-Sunrise Authorizations:

(1) Between the first Sunday in April and the end of the month of April, Class D stations will be permitted to conduct pre-sunrise operation beginning at 6:00 a.m. local time with a maximum power of 500 watts (not to exceed the

station's regular daytime or critical hours power), reduced as necessary to comply with the following requirements:

(i) Full protection is to be provided as specified in applicable international agreements.

(ii) Domestic protection is to be provided to the 0.5 mV/m groundwave signals of co-channel Class A stations, but protection to the 0.5 mV/m-50% skywave contours of these stations is not required.

(iii) In determining the protection to be provided, the effect of each interfering signal will be evaluated separately. The presence of interference from other stations will not reduce or eliminate the required protection.

(iv) Notwithstanding the requirements of paragraph (c)(1)(ii) and (iii) of this section, the stations will be permitted to operate with a minimum power of 10 watts unless a lower power is required by international agreement.

(2) The Commission will issue appropriate authorizations to Class D stations not previously eligible to operate during this period. Class D stations authorized to operate during this pre-sunrise period may continue to operate under their current authorization.

(d) Postsunset service authorizations (PSSA) permit:

(1) Class D stations located on Mexican, Bahamian, and Canadian Class A clear channels to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue for two hours after such specified times.

(2) Class D stations situated outside 0.5 mV/m-50% skywave contours of co-channel domestic Class A stations to commence PSSA operations at sunset times specified in their basic instruments of authorization and to continue up to two hours after such specified times.

(3) Class D stations located within co-cnannel 0.5 mV/m-50% skywave contours of domestic Class A stations to commence PSSA operation at sunset times specified in their basic instruments of authorization and to continue such operation until two hours past such specified times, or until sunset at the nearest Class A station located west of the Class D station, whichever is earlier. Class D stations located west of the Class A station do not qualify for PSSA operation.

(4) Class D stations on regional channels to commence PSSA operation at sunset times specified on their basic instruments of authorization and to continue such operation until two hours past such specified times.

(e) Procedural Matters. (1) Applications for PSRA and PSSA operation are not required. Instead, the FCC will calculate the periods of such operation

and the power to be used pursuant to the provisions of this section and the protection requirements contained in applicable international agreements. Licensees will be notified of permissible power and times of operation. Presunrise and Postsunset service authority permits operation on a secondary basis and does not confer license rights. No request for such authority need be filed. However, stations intending to operate PSRA or PSSA shall submit by letter, signed as specified in §73.3513, the following information:

(i) Licensee name, station call letters and station location,

(ii) Indication as to whether PSRA operation, PSSA operation, or both, is intended by the station,

(iii) A description of the method whereby any necessary power reduction will be achieved.

(2) Upon submission of the required information, such operation may begin without further authority.

(f) Technical Criteria. Calculations to determine whether there is objectionable interference will be determined in accordance with the AM Broadcast Technical Standards, §§73.182 through 73.190, and applicable international agreements. Calculations will be performed using daytime antenna systems, or critical hours antenna systems when specified on the license. In performing calculations to determine assigned power and times for commencement of PSRA and PSSA operation, the following standards and criteria will be used:

(1) Class D stations operating in accordance with paragraphs (b)(1), (b)(2), (d)(1), and (d)(2) of this section are required to protect the nighttime 0.5 mV/m-50% skywave contours of co-channel Class A stations. Where a 0.5 mV/m-50% skywave signal is not produced, the 0.5 mV/m groundwave contour shall be protected.

(2) Class D stations are required to fully protect foreign Class B and C stations when operating PSRA and PSSA; Class D stations operating PSSA are required to fully protect domestic Class B stations. For purposes of determining protection, the nighttime RSS limit will be used in the determination of maximum power permissible.

(3) Class D stations operating in accordance with paragraphs (d)(2) and (d)(3) of this section are required to restrict maximum 10% skywave radiation at any point on the daytime 0.1 mV/m groundwave contour of a co-channel Class A station to 25 μV/m. The location of the 0.1 mV/m contour of the Class A station will be determined by use of Figure M3, Estimated Ground Conductivity in the United States. When the 0.1 mV/m contour extends beyond the national boundary, the international boundary shall be considered the 0.1 mV/m contour.

(4) Class B and D stations on regional channels operating PSRA and PSSA (Class D only) are required to provide full protection to co-channel foreign Class B and C stations.

(5) Class D stations on regional channels operating PSSA beyond 6:00 p.m. local time are required to fully protect domestic Class B stations.

(6) The protection that Class D stations on regional channels are required to provide when operating PSSA until 6:00 p.m. local time is as follows:

(i) For the first half-hour of PSSA operation, protection will be calculated at sunset plus 30 minutes at the site of the Class D station;

(ii) For the second half-hour of PSSA operation, protection will be calculated at sunset plus one hour at the site of the Class D station;

(iii) For the second hour of PSSA operation, protection will be calculated at sunset plus two hours at the site of the Class D station;

(iv) Minimum powers during the period until 6:00 p.m. local time shall be permitted as follows:

Calculated power	Adjusted minimum power
From 1 to 45 watts	50 watts
Above 45 to 70 watts	75 watts
Above 70 to 100 watts	100 watts

(7) For protection purposes, the nighttime RSS limit will be used in the determination of maximum power permissible.

(g) Calculations made under paragraph (d) of this section may not take outstanding PSRA or PSSA operations into account, nor will the grant of a PSRA or PSSA confer any degree of interference protection on the holder thereof.

(h) Operation under a PSRA or PSSA is not mandatory, and will not be included in determining compliance with the requirements of §73.1740. To the extent actually undertaken, however, presunrise operation will be considered by the FCC in determining overall compliance with past programming representations and station policy concerning commercial matter.

(i) The PSRA or PSSA is secondary to the basic instrument of authorization with which it is to be associated. The PSRA or PSSA may be suspended, modified, or withdrawn by the FCC without prior notice or right to hearing,

if necessary to resolve interference conflicts, to implement agreements with foreign governments, or in other circumstances warranting such action. Moreover, the PSRA or PSSA does not extend beyond the term of the basic authorization.

(j) The Commission will periodically recalculate maximum permissible power and times for commencing PSRA and PSSA for each Class D station operating in accordance with paragraph (c) of this section. The Commission will calculate the maximum power at which each individual station may conduct presunrise operations during extended daylight saving time and shall issue conforming authorizations. These original notifications and subsequent notifications should be associated with the station's authorization. Upon notification of new power and time of commencing operation, affected stations shall make necessary adjustments within 30 days.

(k) A PSRA and PSSA does not require compliance with §§73.45, 73.182 and 73.1560 where the operation might otherwise be considered as technically substandard. Further, the requirements of paragraphs (a)(5), (b)(2), (c)(2), and (d)(2) of §73.1215 concerning the scale ranges of transmission system indicating instruments are waived for PSRA and PSSA operation except for the radio frequency ammeters used in determining antenna input power.

(l) A station having an antenna monitor incapable of functioning at the authorized PSRA and PSSA power when using a directional antenna shall take the monitor reading using an unmodulated carrier at the authorized daytime power immediately prior to commencing PSRA or PSSA operations. Special conditions as the FCC may deem appropriate may be included for PSRA or PSSA to insure operation of the transmitter and associate equipment in accordance with all phases of good engineering practice.

23. Section 73.150 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(3), (b)(5)(iv), (b)(5)(v), and (b)(6)(vii), and equation 2, by changing all references to miles in paragraph (b)(1)(i) to kilometers, and by revising the formulas in paragraph (b)(1)(i) to read as follows:

§73.150 Directional antenna systems.

(a) For each station employing a directional antenna, all determinations of service provided and interference caused shall be based on the inverse fields of the standard radiation pattern for that station. (As applied to nighttime operation the term "standard radiation pattern" shall include the radiation pattern in the horizontal plane, and radiation patterns at angles above this plane.)

* * * * *

(b) * * *

(1) The standard radiation pattern for the proposed antenna in the horizontal plane, and where pertinent, tabulated values for the azimuthal radiation patterns for angles of elevation up to and including 60 degrees, with a separate section for each increment of 5 degrees.

(i) * * *

where:

$E(\phi,\theta)_{th}$ Represents the theoretical inverse distance fields at one kilometer for the given azimuth and elevation.

* * *

The standard radiation pattern shall be constructed in accordance with the following mathematical expression:

$$E(\phi,\theta)_{std} = 1.05\sqrt{[E(\phi,\theta)_{th}]^2 + Q^2} \qquad \text{(Eq. 2)}$$

where:

$E(\phi,\theta)_{std}$ Represents the inverse fields at one kilometer which are deemed to be produced by the directional antenna in the horizontal and vertical planes.

$E(\phi,\theta)_{th}$ Represents the theoretical inverse distance fields at one kilometer as computed in accordance with Eq. 1, above.

Q is the greater of the following quantities:

$$0.025\, g(\theta)\, E_{rss}$$

or

$$10.0\, g(\theta)\sqrt{P_{kW}}$$

* * * * *

(ii) * * *

(2) All patterns shall be computed for integral multiples of five degrees, beginning with zero degrees representing true north, and, shall be plotted to the largest scale possible on unglazed letter-size paper (main engraving

approximately 7" x 10") using only scale divisions and subdivisions of 1, 2, 2.5, or 5 times 10^{nth}. The horizontal plane pattern shall be plotted on polar coordinate paper, with the zero degree point corresponding to true north. Patterns for elevation angles above the horizontal plane may be plotted in polar or rectangular coordinates, with the pattern for each angle of elevation on a separate page. Rectangular plots shall begin and end at true north, with all azimuths labelled in increments of not less than 20 degrees. If a rectangular plot is used, the ordinate showing the scale for radiation may be logarithmic. Such patterns for elevation angles above the horizontal plane need be submitted only upon specific request by Commission staff. Minor lobe and null detail occurring between successive patterns for specific angles of elevation need not be submitted. Values of field strength on any pattern less than ten percent of the maximum field strength plotted on that pattern shall be shown on an enlarged scale. Rectangular plots with a logarithmic ordinate need not utilize an expanded scale unless necessary to show clearly the minor lobe and null detail.

(3) The effective (RMS) field strength in the horizontal plane of $\mathbf{E}(\theta,\theta)_{std.}$ $\mathbf{E}(\phi,\theta)_{th}$ and the root sum square (RSS) value of the inverse fields of the array elements at 1 kilometer, derived from the equation for $\mathbf{E}(\phi,\theta)_{th}$. . These values shall be tabulated on the page on which the horizontal plane pattern is plotted, which shall be specifically labelled as the Standard Horizontal Plane Pattern.

(4) * * *

(5) * * *

(iv) Where waiver of the content of this section is requested or upon request of the Commission staff, all assumptions made and the basis therefor, particularly with respect to the electrical height of the elements, current distribution along elements, efficiency of each element, and ground conductivity.

(v) Where waiver of the content of this section is requested, or upon request of the Commission staff, those formulas used for computing $\mathbf{E}(\phi,\theta)_{th}$ and $\mathbf{E}(\phi,\theta)_{std}$. Complete tabulation of final computed data used in plotting patterns, including data for the determination of the RMS value of the pattern, and the RSS field of the array.

(6) * * *

(vii) Additional requirements relating to modified standard patterns appear in Section 73.152(c)(3) and (c)(4).

* * * * *

24. Section 73.151 is amended by adding a new paragraph (b) to read as follows:

§73.151 Field strength measurements to establish performance of directional antennas.

* * * * *

(b) For directional stations authorized to operate in the 1605-1705 kHz band, the measurements to support pattern RMS compliance referred to in (a)(1)(ii) and (a)(1)(iii) are not required.

25. Section 73.152 is amended by adding new paragraphs (c)(2)(iv), (c)(2)(iv)(A), and (c)(2)(iv)(B).

§73.152 Modification of directional antenna data

* * * * *

(c)(2)(iv) Where the measured inverse distance field exceeds the value permitted by the standard pattern, and augmentation is allowable under the terms of this section, the requested amount of augmentation shall be centered upon the azimuth of the radial upon which the excessive radiation was measured and shall not exceed the following:

(A) the actual measured inverse distance field value, where the radial does not involve a required monitoring point.

(B) 20% above the actual measured inverse field value, where the radial has a monitoring point required by the instrument of authorization.

Whereas some pattern smoothing can be accommodated, the extent of the requested span(s) shall be minimized and in no case shall a requested augmentation span extend to a radial azimuth for which the analyzed measurement data does not show a need for augmentation.

* * * * *

26. Section 73.153 is amended by revising the last sentence in the paragraph to read as follows:

§73.153 Field strength measurements in support of applications or evidence at hearings.

* * * The antenna resistance measurements required by Section 73.186 need not be taken or submitted.

27. Section 73.182 is revised to read as follows:

§73.182 Engineering standards of allocation.

(a) §§73.21 to 73.37, inclusive, govern allocation of facilities in the AM broadcast band 535-1705 kHz. §73.21 establishes three classes of channels in this band, namely, clear, regional and local. The classes and power of AM broadcast stations which will be assigned to the various channels are set forth in §73.21. The classifications of the AM broadcast stations are as follows:

(1) Class A stations operate on clear channels with powers of not less than 10kW and not more than 50 kW. These stations are designed to render primary and secondary service over an extended area, hence have their primary service areas free from objectionable interference from other stations on the same and adjacent channels. Their secondary service areas are protected from objectionable interference from stations on the same and adjacent channels. For purposes of protection, Class A stations may be divided into two groups, those located in any of the contiguous 48 States and those located in Alaska in accordance with the assignment to channels allocated by §73.25.

(i) The mainland U.S. Class A stations are those assigned to the channels allocated by §73.25. The power of these stations shall be 50 kW. The Class A stations in this group are afforded protection as follows:

(A) Daytime. To the 0.1 mV/m groundwave contour from stations on the same channel, and to the 0.5 mV/m groundwave contour from stations on adjacent channels.

(B) Nighttime. To the 0.5 mV/m 50% skywave contour from stations on the same and adjacent channels.

(ii) The Alaskan Class A stations operate on the channels allocated by §73.25 with a minimum power of 10 kW and a maximum power of 50 kW, antenna efficiency of 175 mV/m for 1 kW. Stations operating on these channels in Alaska which have not been designated as Class A stations in response to licensee request will continue to be considered as Class B stations. During daytime hours an Alaskan Class A station receives protection to the 100 μV/m groundwave contour from co-channel stations. During nighttime hours an Alaskan Class A station receives protection to the 100 μV/m-50 percent skywave contour from co-channel and adjacent channel stations. Protection is given to the 0.5 mV/m groundwave contour from stations on adjacent channels for day operation.

NOTE: In the Report and Order in MM Docket No. 83-807, the Commission designated 15 stations operating on U.S. clear channels as Alaskan Class A stations. Eleven of these stations already have Alaskan Class A facilities and are to be protected accordingly. Permanent designation of the other four stations as Alaskan Class A is conditioned on their constructing minimum Alaskan Class A facilities no later than December 31, 1989. During this period, until such facilities are obtained, temporary designation as Alaskan Class A stations shall be applied, and calculations involving these stations should be based on existing facilities but with an assumed power of 10 kW.

Thereafter, these stations are to be protected based on their actual Alaskan Class A facilities. If any of these stations does not obtain Alaskan Class A facilities in the period specified, it is to be protected as a Class B station based on its actual facilities. These four stations may increase power to 10 kW without regard to the impact on Class B co-channel stations. However, increases by these stations beyond 10 kW (or by existing Alaskan Class A stations beyond their current power level) are subject to applicable protection requirements for co-channel Class B stations. Other stations not on the original list but which meet applicable requirements may obtain Alaskan Class A status by seeking such designation from the Commission. If a power increase or other change in facilities by a station not on the original list is required to obtain minimum Alaskan Class A facilities, any such application shall meet the interference protection requirements applicable to an Alaskan Class A proposal on the channel.

(2) Class B stations are stations which operate on clear and regional channels with powers not less than 0.25 kW nor more than 50 kW. These stations render primary service only, the area of which depends on their geographical location, power, and frequency. It is recommended that Class B stations be so located that the interference received from other stations will not limit the service area to a greater value of groundwave contour than 2.0 mV/m nighttime and to the 0.5 mV/m groundwave contour daytime, which are the values for the mutual protection of this class of stations with other stations of the same class.

NOTE: See §§73.21(b)(1) and 73.26(b) concerning power restrictions and classifications relative to Class B, C, and D stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands. Stations in the above-named places that are reclassified from Class C to Class B stations under §73.26(b) shall not be authorized to increase power to levels that would increase the nighttime interference-free limit of co-channel Class C stations in the conterminous United States.

(3) Class C stations operate on local channels, normally rendering primary service to a community and the suburban or rural areas, contiguous thereto, with powers not less than 0.25 kW, nor more than 1 kW, except as provided in §73.21(c)(1). Such stations are normally protected to the daytime 0.5 mV/m contour. On local channels the separation required for the daytime protection shall also determine the nighttime separation. Where directional antennas are employed daytime by Class C stations operating with more than 0.25 kW power, the separations required shall in no case be less than those necessary to afford protection, assuming nondirectional operation with 0.25 kW. In no case will 0.25 kW or greater nighttime power be authorized to a station unable to operate nondirectionally at 0.25 kW in the daytime. The actual nighttime limitation will be calculated. Class C stations in the 48 contiguous United States may during nighttime hours treat all stations assigned in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450, and 1490 kHz as if they were Class C stations.

(4) Class D stations operate on clear and regional channels with daytime powers of not less than 0.25 kW (or equivalent RMS field of 141 mV/m at one kilometer if less than 0.25 kW) and not more than 50 kW. Class D stations that have previously received nighttime authority operate with powers of less than 0.25 kW (or equivalent RMS fields of less than 141 mV/m at one kilometer) are not required to provide nighttime coverage in accordance with §73.24(j) and are not protected from interference during nighttime hours. Such nighttime authority is permitted on the basis of full nighttime protection being afforded to all Class A and Class B stations.

(b) When a station is already limited by interference from other stations to a contour of higher value than that normally protected for its class, the individual received limits shall be the established standard for such station with respect to interference from each other station.

(c) The four classes of AM broadcast stations have in general three types of service area, i.e., primary, secondary and intermittent. (See §73.14 for the definitions of primary, secondary, and intermittent service areas.) Class A stations render service to all three areas. Class B stations render service to a primary area but the secondary and intermittent service areas may be materially limited or destroyed due to interference from other stations, depending on the station assignments involved. Class C and D stations usually have only primary service areas. Interference from other stations may limit intermittent service areas and generally prevents any secondary service to those stations which operate at night. Complete intermittent service may still be obtained in many cases depending on the station assignments involved.

(d) The groundwave signal strength required to render primary service is 2 mV/m for communities with populations of 2,500 or more; and 0.5 mV/m for communities with populations of less than 2,500. See §73.184 for curves showing distance to various groundwave field strength contours for different frequencies and ground conductivities, and also see §73.183, "Groundwave signals."

(e) The FCC will authorize the directional antenna for a Class C station for daytime operation only with power in excess of 0.25 kW. In computing the degrees of protection which such antenna will afford, the radiation produced by this antenna will be assumed to be no less, in any direction, than that which would result from non-directional operation using a single element of the directional array, with 0.25 kW.

(f) All classes of broadcast stations have primary service areas subject to limitation by fading and noise, and interference from other stations to the contours set out for each class of station.

(g) Secondary service is delivered during nighttime hours in the areas where the skywave for 50% or more of the time has a field strength of 0.5 mV/m or greater (0.1 mV/m in Alaska). It is not considered that satisfactory secondary service can be rendered to cities unless the skywave approaches in

value the groundwave required for primary service. The secondary service is necessarily subject to some interference and extensive fading whereas the primary service area of a station is subject to no objectionable interference or fading. Only Class A stations are assigned on the basis of rendering secondary service.

Note: Standards have not been established for objectionable fading as such standards would necessarily depend on receiver characteristics. Selective fading causing audio distortion and the signal fading below the noise level are the objectionable characteristics of fading on modern design receivers. The AVC circuits in the better designed receivers in general maintain the audio output sufficiently constant to be satisfactory during most fading.

(h) The intermittent service is rendered by the groundwave and begins at the outer boundary of the primary service area and extends to the value of signal where it may be considered as having no further service value. This may be down to only a few μV/m in certain areas and up to several millivolts in other areas of high noise level, interference from other stations, or objectionable fading at night. The intermittent service area may vary widely from day to night and generally varies from time to time. Only Class A stations are assigned for protection from interference from other stations into the intermittent service area.

(i) Broadcast stations are licensed to operate unlimited time, limited time, daytime, share time, and specified hours. (See §73.1710, 73.1725, 73.1720, 73.1715, and 73.1730.) Applications for new stations shall specify unlimited time operation only.

(j) §73.24 sets out the general requirements for obtaining an increase in facilities of a licensed station and for a new station. §§73.24(b) and 73.37 concern the matter of interference that may be caused by a new assignment or increase in facilities of an existing assignment. §73.30 describes the method to determine eligibility for operation in the 1605-1705 kHz band.

(k) Objectionable nighttime interference from another broadcast station is the degree of interference produced when, at a specified field strength contour with respect to the desired station, the field strength of an undesired station (on the same frequency and/or on the two first adjacent channels, after application of proper protection ratio) exceeds for 10% or more of the time the values set forth in these standards. The value derived from the root-sum-square of all contributions can then be used to determine the extent of a station's interference-free coverage.

(l) With respect to the root-sum-square values of interfering field strengths referred to in this section, calculation is accomplished by considering the signals on the three channels of concern (co- and first adjacencies) in order of decreasing magnitude, adding the squares of the values and extracting the square root of the sum.

(2) For purposes of simplification, the RSS value may be considered to be stabilized when, by following the order in (k)(1), an interfering signal is added which does not change the value of the second decimal place figure of the cumulative RSS value of the interference from existing stations, and which at the same time is not greater than the smallest signal already included in the RSS value of interference from existing stations. However, where further accuracy is required, a calculation including all contributing signals will govern.

(l) Objectionable nighttime interference from a station shall be considered to exist to a station when, at the field strength contour specified in paragraph (q) of this section with respect to the class to which the station belongs, the field strength of an interfering station operating on the same channel or on a first adjacent channel after signal adjustment using the proper protection ratio, exceeds for 10% or more of the time the value of the permissible interfering signal set forth opposite such class in paragraph (q) of this section.

(m) For the purpose of estimating the coverage and the interfering effects of stations in the absence of field strength measurements, use shall be made of Figure 8 of §73.190, which describes the estimated effective field (for 1 kW power input) of simple vertical omnidirectional antennas of various heights with ground systems having at least 120 quarter-wavelength radials. Certain approximations, based on the curve or other appropriate theory, may be made when other than such antennas and ground systems are employed, but in any event the effective field to be employed shall not be less than given in the following:

Class of station	Effective field (at 1 km)
All Class A (except Alaskan)	362 mV/m
Class A (Alaskan), B and D	282 mV/m
Class C	241 mV/m

In case a directional antenna is employed, the interfering signal of a broadcasting station will vary in different directions, being greater than the above values in certain directions and less in others depending upon the design and adjustment of the directional antenna system. To determine the interference in any direction the measured or calculated radiated field (unabsorbed field strength at 1 kilometer from the array) must be used in conjunction with the appropriate propagation curves. (See §73.185 for further discussion and solution of a typical directional antenna case.)

NOTE: For Class B stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands, 241 mV/m shall be used.

(n) The existence or absence of objectionable groundwave interference from stations on the same or adjacent channels shall be determined by actual measurements made in accordance with the method described in §73.186, or in

the absence of such measurements, by reference to the propagation curves of §73.184. The existence or absence of objectionable interference due to skywave propagation shall be determined by reference to Formula 2 in §73.190.

(o) Computation of Skyway Field Strength Values:

(1) Fifty Percent Skywave Field Strength Values (Clear Channel). In computing the fifty percent skywave field strength values of a Class A clear channel station, use shall be made of Formula 1 of §73.190, entitled "Skywave Field Strength" for 50 percent of the time.

(2) Ten Percent Skywave Field Strength Values. In computing the 10% skywave field strength for stations on a single signal or an RSS basis, Formula 2 in §73.190 shall be used.

(3) Determination of Angles of Departure. In calculating skywave field strength for stations on all channels, the pertinent vertical angle shall be determined by use of the formula in §73.190(d).

(p) The distance to any specified groundwave field strength contour for any frequency may be determined from the appropriate curves in §73.184 entitled "Ground Wave Field Strength vs. Distance."

(q) Protected service contours and permissible interference signals for broadcast stations are as follows (for Class A stations, see paragraph (a) of this section):

Class of station	Class of channel used	Signal strength contour of area protected from objectionable interference 1/ (μV/m)		Permissible interfering signal (μV/m)	
		Day 2/	Night	Day 2/	Night 3/
A	Clear	SC 100 AC 500	SC 500 50% SW AC 500 50% SW	SC 5 AC 79	SC 12.5 AC 125
A(Alaskan)	do	SC 100 AC 500	SC 100 50% SW AC 500	SC 5 AC 79	SC 2 AC 125
B	Clear Regional	500	2000 2/	25 AC 79	50 158
C	Local	500	Not presc. 4/	SC 25	Not presc.
D	Clear Regional	500	Not presc.	SC 25 AC 79	Not presc.

1/ When a station is already limited by interference from other stations to a contour of higher value than that normally protected for its class, this contour shall be the established coverage standard for such station. Changes proposed by a station that already exceeds the value specified in the table shall be required to demonstrate a reduction of the existing interference contribution of at least 10%. In no case will a reduction be required that would result in a value that is below the pertinent value specified in the table.

2/ Groundwave.

3/ Skywave field strength for 10 percent or more of the time.

4/ During nighttime hours, Class C stations in the contiguous 48 States may treat all Class B stations assigned to 1230, 1240, 1340, 1400, 1450 and 1490 kHz in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands as if they were Class C stations.

Note: SC = Same channel; AC = Adjacent channel; SW = Skywave

(r) The following table of logarithmic expressions is to be used as required for determining the minimum permissible ratio of the field strength of a

desired to an undesired signal. This table shall be used in conjunction with the protected contours specified in paragraph (q).

Frequency separation of desired to undesired signals (kHz)	Desired groundwave to: Undesired groundwave (dB)	Undesired 10% skywave (dB)	Desired 50% skywave to undesired 10% skywave (dB)
0	26	26	26
10	-16	-16	0

(s) Two stations, one with a frequency twice that of the other, should not be assigned in the same groundwave service area unless special precautions are taken to avoid interference from the second harmonic of the lower frequency. Additionally, in selecting a frequency, consideration should be given to the fact that occasionally the frequency assignment of two stations in the same area may bear such a relation to the intermediate frequency of some broadcast receivers as to cause so-called "image" interference. However, since this can usually be rectified by readjustment of the intermediate frequency of such receivers, the Commission, in general, will not take this kind of interference into consideration when authorizing stations.

(t) Two stations operating with synchronized carriers and carrying the identical program will have their groundwave service subject to some distortion in areas where the signals from the two stations are of comparable strength. For the purpose of estimating coverage of such stations, areas in which the signal ratio is between 1 to 2 and 2 to 1 will not be considered as having satisfactory service.

Note: Two stations are considered to be operated synchronously when the carriers are maintained within 0.2 Hz of each other and they transmit identical programs.

28. Section 73.183 is amended by removing paragraph (b) and adding the note that follows paragraph (a), and by redesignating paragraphs (c) through (f) as (b) through (e), and revising new paragraphs (c) and (e) to read as follows:

§73.183 Groundwave signals.

(a) * * *

Note: Groundwave field strength measurements will not be accepted or considered for the purpose of establishing that interference to a station in a foreign country other than Canada, or that signal strength at the border thereof, would be less than indicated by the application of the ground conductivity maps and engineering standards contained in this part and applicable international agreements. Satisfactory groundwave measurements offered for the purpose of demonstrating values of conductivity other than

those shown by Figure M3 in problems involving protection of Canadian stations will be considered only if, after review thereof, the appropriate agency of the Canadian government notifies the Commission that they are acceptable for such purpose.

* * * * *

(c) Example of determining interference by the graphs in §73.184:

It is desired to find whether objectionable interference may exist between a proposed 5 kW Class B station on 990 kHz and an existing 1 kW Class B station on the adjacent channel of 1000 kHz. The spacing between the two stations is 260 kilometers and both stations operate nondirectionally with antenna systems which produce an effective field of 282 mV/m at one kilometer. (See §73.185 in case of use of directional antennas.) The conductivity at each station and of the intervening terrain is determined as 6 mS/m. The protection to Class B stations during daytime is to the 500 μV/m (0.5 mVm) contour using a 16 dB protection factor. The distance to the 500 μV/m groundwave contour of the 1 kW station is determined by the use of the appropriate curve in §73.184. Since the curve is plotted for 100 mV/m at a 1 kilometer, to find the distance to the 0.5 mV/m contour of the 1 kw station, it is necessary to determine the distance to the 0.1773 m/Vm contour.

(100 X 0.5/282 = 0.1773)

Using the 6 mS/m curve, the estimated radius of the 0.5 mV/m contour is seen to be 62.5 kilometers. Subtracting this distance from the distance between the two stations leaves 197.5 kilometers. Using the same propagation curve, the signal from the 5 kW station at this distance is seen to be 0.059 mV/m. Since a protection factor of 16 dB, desired to undesired signal, applies to stations separated by 10 kHz, the undesired signal could have had a value of up to 0.079 mV/m without causing objectionable interference. For co-channel studies, a desired to undesired signal ratio of no less than 20 to 1 (26 dB) is required to avoid causing objectionable interference.

(d) * * *

(e) An example of the use of the equivalent distance method follows:

It is desired to determine the distance to the 0.5 mV/m and 0.025 mV/m contours of a station on a frequency of 1000 kHz with an inverse distance field of 100 mV/m at one kilometer being radiated over a path having a conductivity of 10 mS/m for a distance of 20 kilometers, 5 mS/m for the next 30 kilometers and 15 mSm/m thereafter. Using the appropriate curve in §73.184, Graph 12, at a distance of 20 kilometers on the curve for 10 mS/m it is seen that the field strength is 2.84 mV/m. On the 5mS/m curve, the equivalent distance to this field strength is seen to be 14.92 kilometers, which is 5.08 (20 - 14.92) kilometers nearer to the transmitter. Continuing on the propagation curve, the distance to a field strength of 0.5 mV/m is seen

to be 36.11 kilometers. The actual length of the path travelled, however is 41.19 (36.11 + 5.08) kilometers. Continuing on this propagation curve to the conductivity change at 44.92 (50.00 - 5.08) kilometers, it is seen that the field strength is 0.304 mV/m. On the 15 mS/m propagation curve, the equivalent distance to this field strength is seen to be 82.94 kilometers, which changes the effective path length by 38.02 (82.94 - 44.92) kilometers. Continuing on this propagation curve, the distance to a field strength of 0.025 mV/m is seen to be 224.4 kilometers. The actual length of the path travelled, however, is 191.46 (224.4 + 5.08 - 38.02) kilometers.

29. Section 73.184 is amended by revising paragraph (a) and the note following paragraph (b), removing paragraph (c), and revising and redesignating paragraphs (d), (e), and (f) as (c), (d), and (e), to read as follows:

§73.184 Groundwave field strength charts.

(a) Graphs 1 to 20 show, for each of 20 frequencies, the computed values of groundwave field strength as a function of groundwave conductivity and distance from the source of radiation. The groundwave field strength is here considered to be that part of the vertical component of the electric field which has not been reflected from the ionosphere nor from the troposphere. These 20 families of curves are plotted on log-log graph paper and each is to be used for the range of frequencies shown thereon. Computations are based on a dielectric constant of the ground (referred to air as unity) equal to 15 for land and 80 for sea water and for the ground conductivities (expressed in mS/m) given on the curves. The curves show the variation of the groundwave field strength with distance to be expected for transmission from a vertical antenna at the surface of a uniformly conducting spherical earth with the groundwave constants shown on the curves. The curves are for an antenna power of such efficiency and current distribution that the inverse distance (unattenuated) field is 100 mV/m at 1 kilometer. The curves are valid at distances large compared to the dimensions of the antenna for other than short vertical antennas.

(b) * * *

NOTE: The computed values of field strength versus distance used to plot Graphs 1 to 20 are available in tabular form. Copies of these tabulations may be ordered from the FCC official copy center whose name and address may be obtained by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, (202) 632-7000.

(c) Provided the value of the dielectric constant is near 15, the curves of Graphs 1 to 20 may be compared with experimental data to determine the appropriate values of the ground conductivity and of the inverse distance field strength at 1 kilometer. This is accomplished simply by plotting the measured fields on transparent log-log graph paper similar to that used for Graphs 1 to 20 and superimposing this chart over the graph corresponding to

the frequency involved. The log-log graph sheet is then shifted vertically until the best fit is obtained with one of the curves on the graph; the intersection of the inverse distance line on the graph with the 1 kilometer abscissa on the chart determines the inverse distance field strength at 1 kilometer. For other values of dielectric constant, the following procedure may be used for a determination of the dielectric constant of the ground, conductivity of the ground and the inverse distance field strength at 1 kilometer. Graph 21 gives the relative values of groundwave field strength over a plane earth as a function of the numerical distance p and phase angle b. On graph paper with coordinates similar to those of Graph 21, plot the measured values of field strength as ordinates versus the corresponding distances from the antenna in kilometers as abscissae. The data should be plotted only for distances greater than one wavelength (or, when this is greater, five times the vertical height of the antenna in the case of a single element, i.e., nondirectional antenna or 10 times the spacing between the elements of a directional antenna) and for distances less than $80f^{1/3}_{mHz}$ kilometers (i.e., 80 kilometers at 1 mHz). Then, using a light box, place the sheet with the data plotted on it over the sheet with the curves of Graph 21 and shift the data sheet vertically and horizontally (making sure that the vertical lines on both sheets are parallel) until the best fit with the data is obtained with one of the curves on Graph 21. When the two sheets are properly lined up, the value of the field strength corresponding to the intersection of the inverse distance line of Graph 21 with the 1 kilometer abscissa on the data sheet is the inverse distance field strength at 1 kilometer, and the values of the numerical distance at 1 kilometer, p_1, and of b are also determined. Knowing the values of b and p_1 (the numerical distance at one kilometer), we may substitute in the following approximate values of the ground conductivity and dielectric constant.

$$\chi \cong \frac{\pi}{p} \cdot \left(R/\lambda \right)_1 \cdot \cos b \qquad \text{(Eq. 1)}$$

$\left(R/\lambda\right)_1$ = Number of wavelengths in 1 kilometer,

* * *

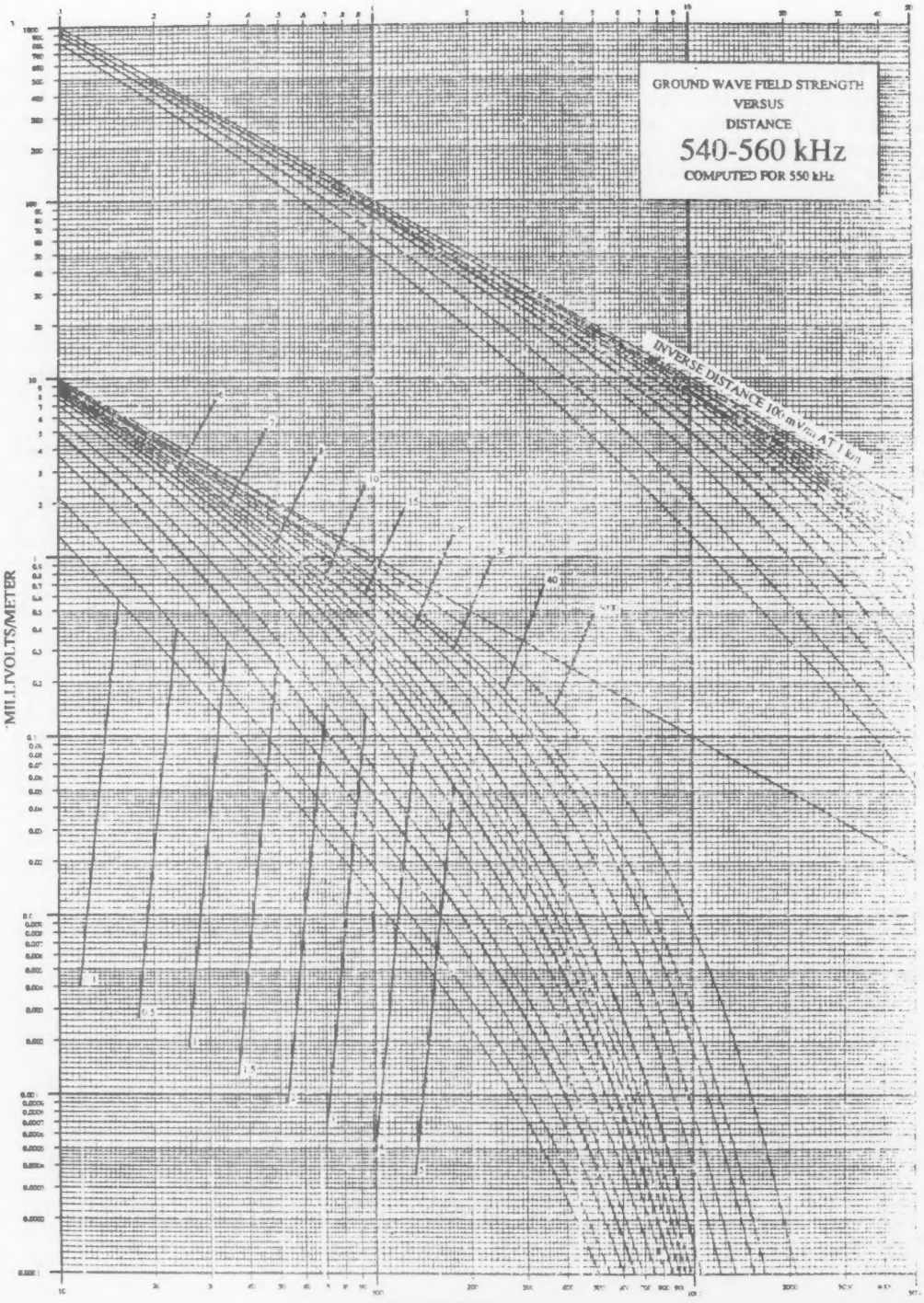
f_{MHz} = frequency expressed in megahertz,

$$\epsilon \cong \chi \tan b - 1 \qquad \text{(Eq. 3)}$$

ϵ = dielectric constant of the ground referred to air as unity.

First solve for χ by substituting the known values of p_1, $(R_1)_1$, and cos b in equation (1). Equation (2) may then be solved for δ and equation (3) for ϵ. At distances greater than $80/f^{1/3}$ MHz kilometers the curves of Graph 21 do not give the correct relative values of field strength since the curvature of the earth weakens the field more rapidly than these plane

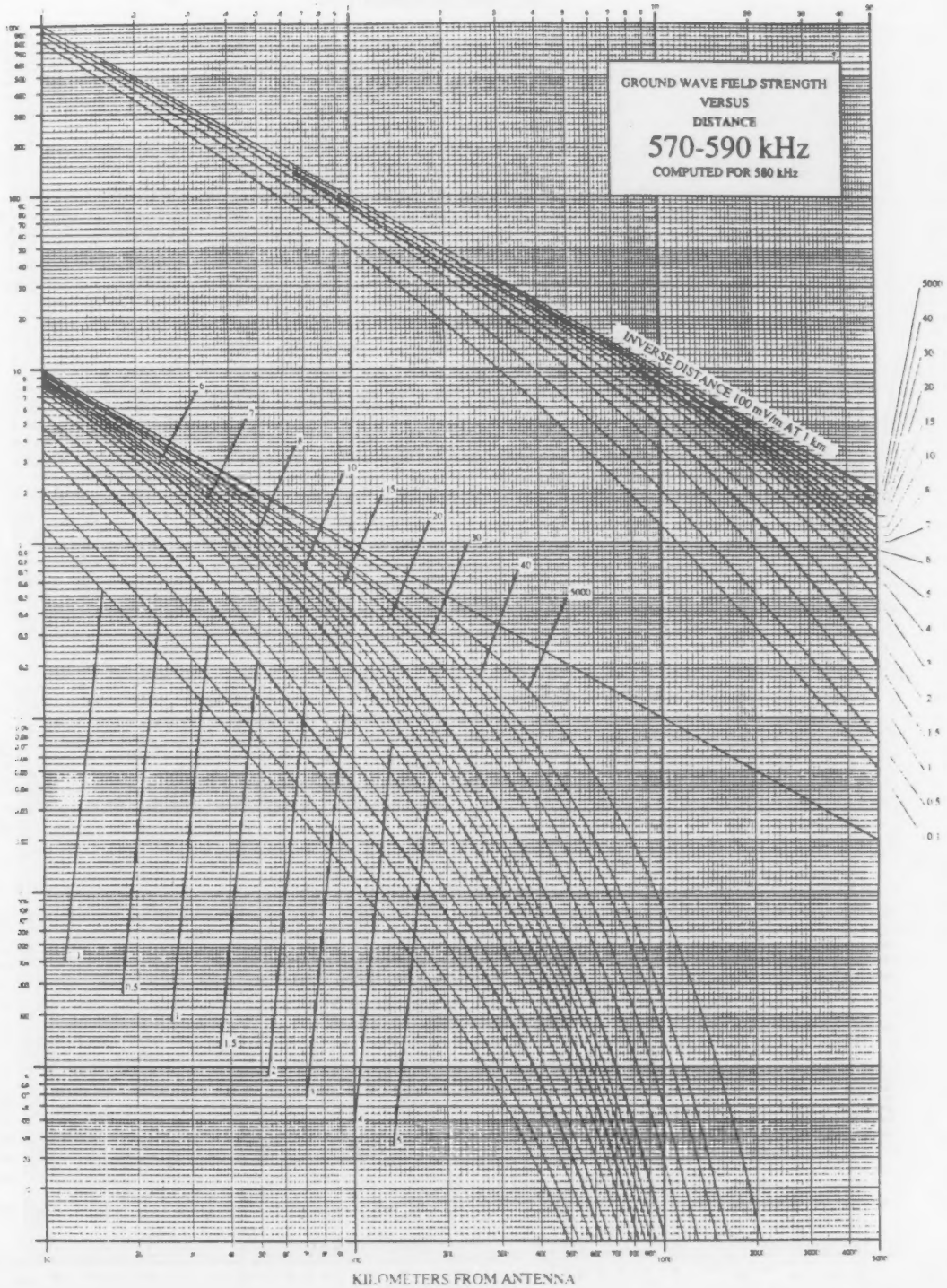
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 1

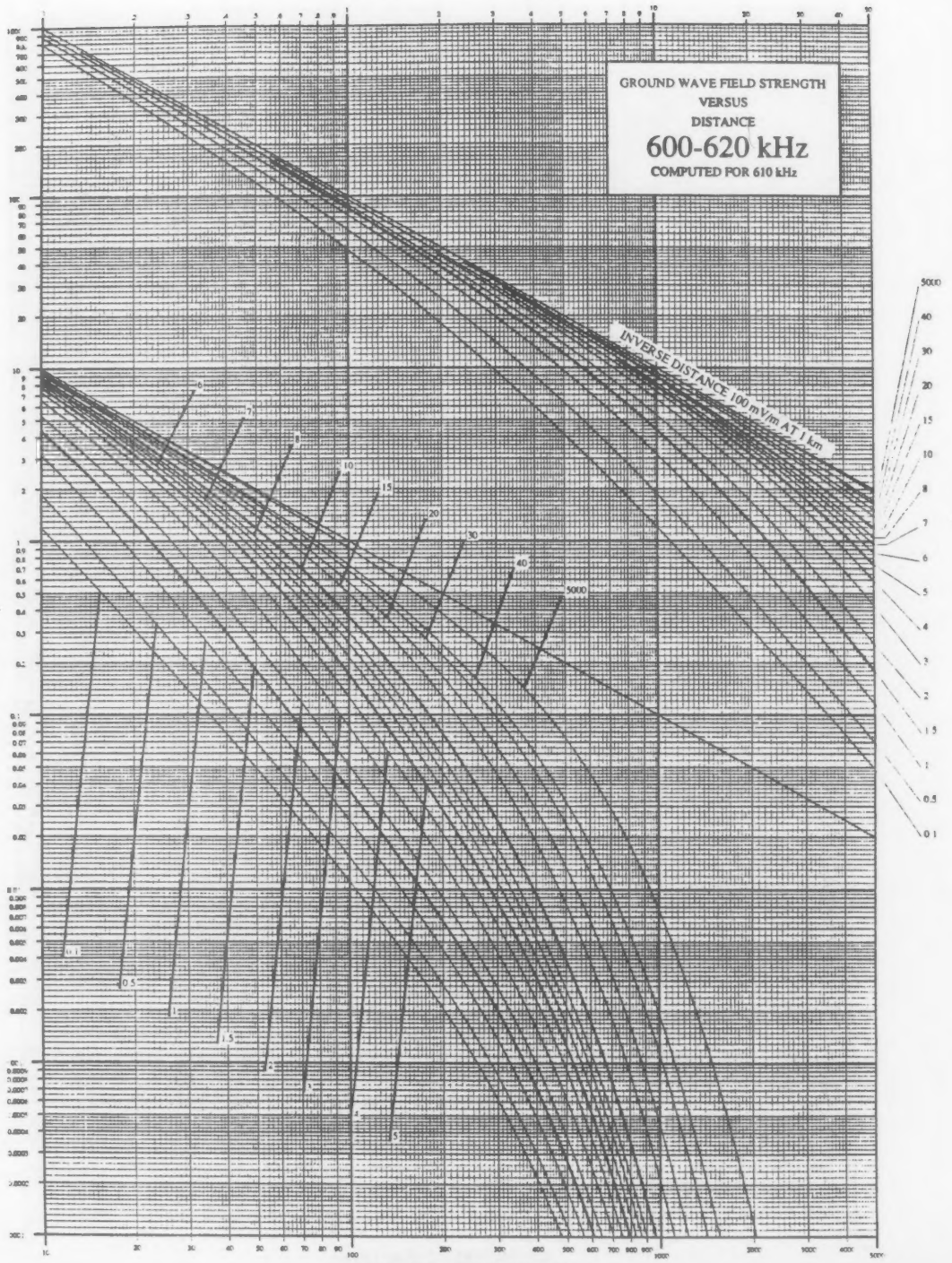
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 2

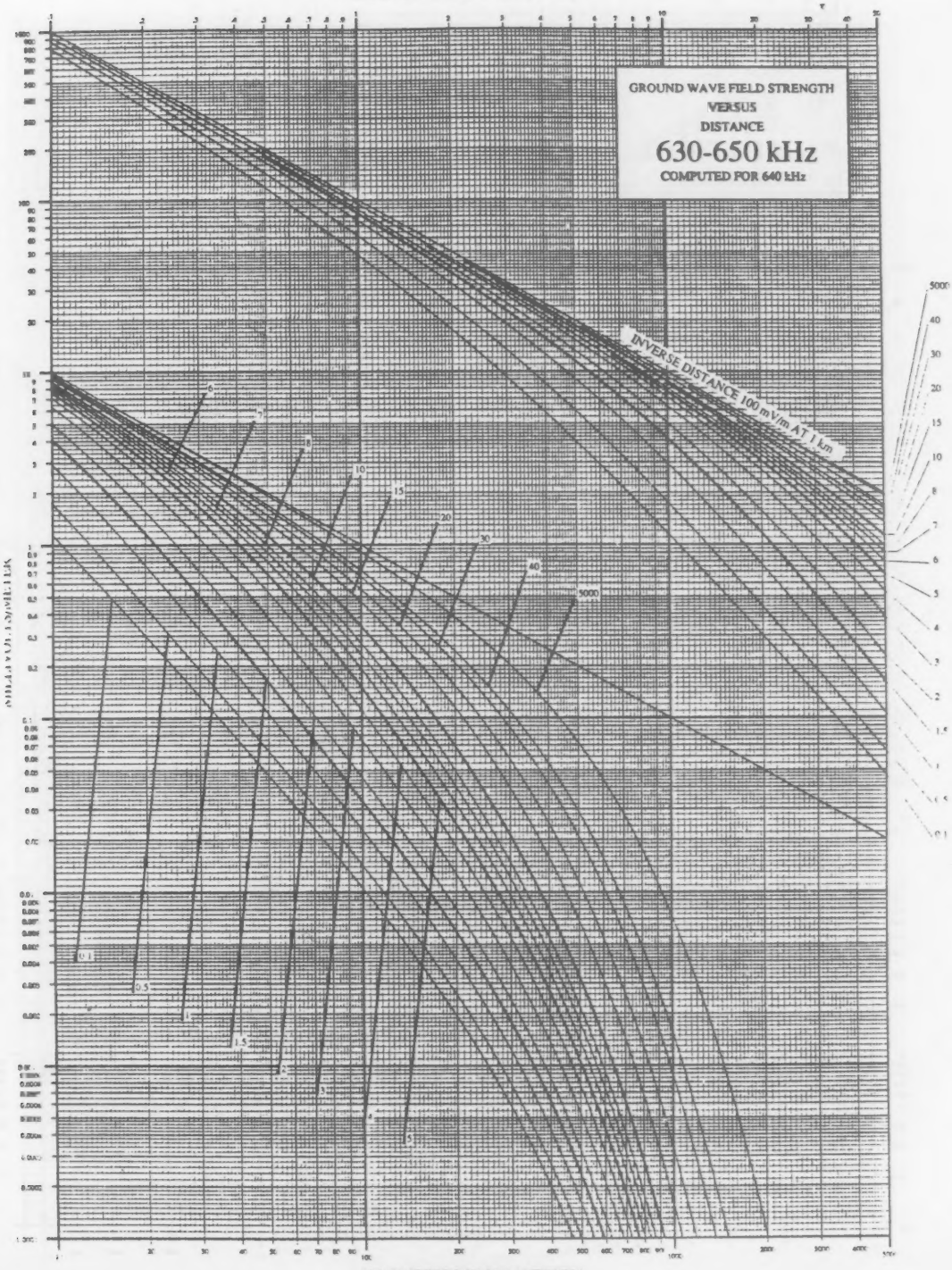
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 3

KILOMETERS FROM ANTENNA



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GRAPH 4

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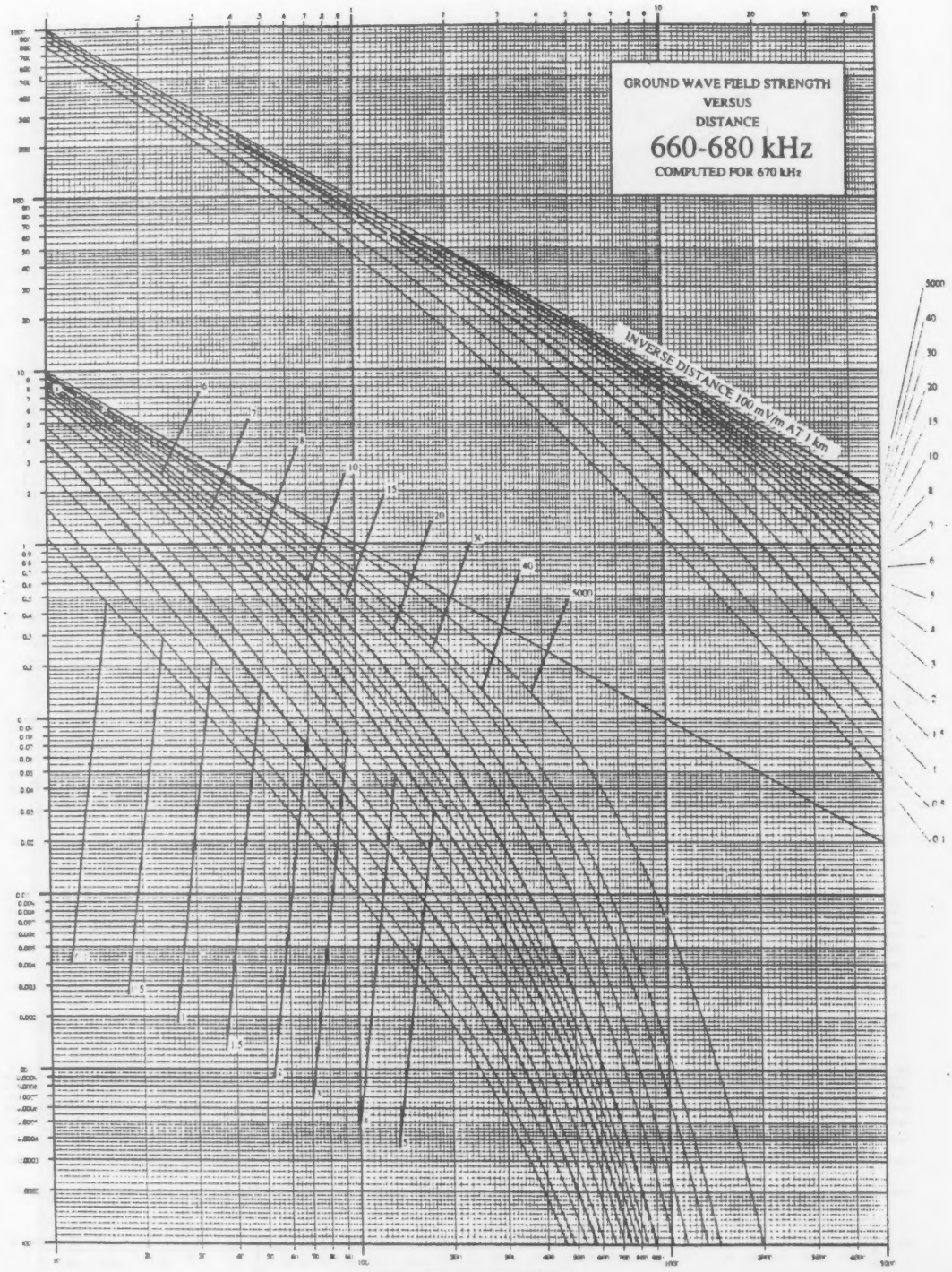
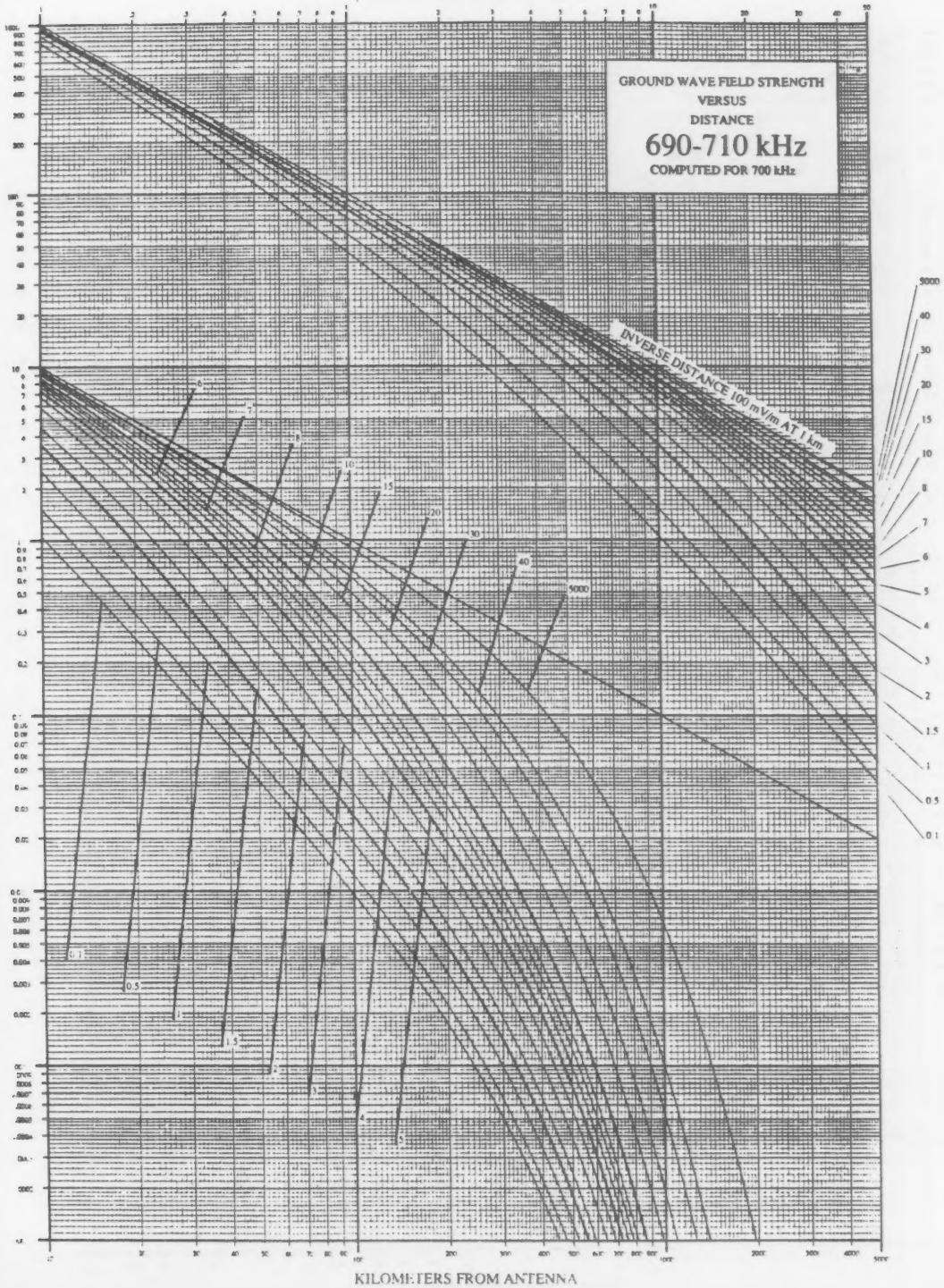


KILOMETERS FROM ANTENNA

GRAPH 5

KILOMETERS FROM ANTENNA



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GRAPH 6

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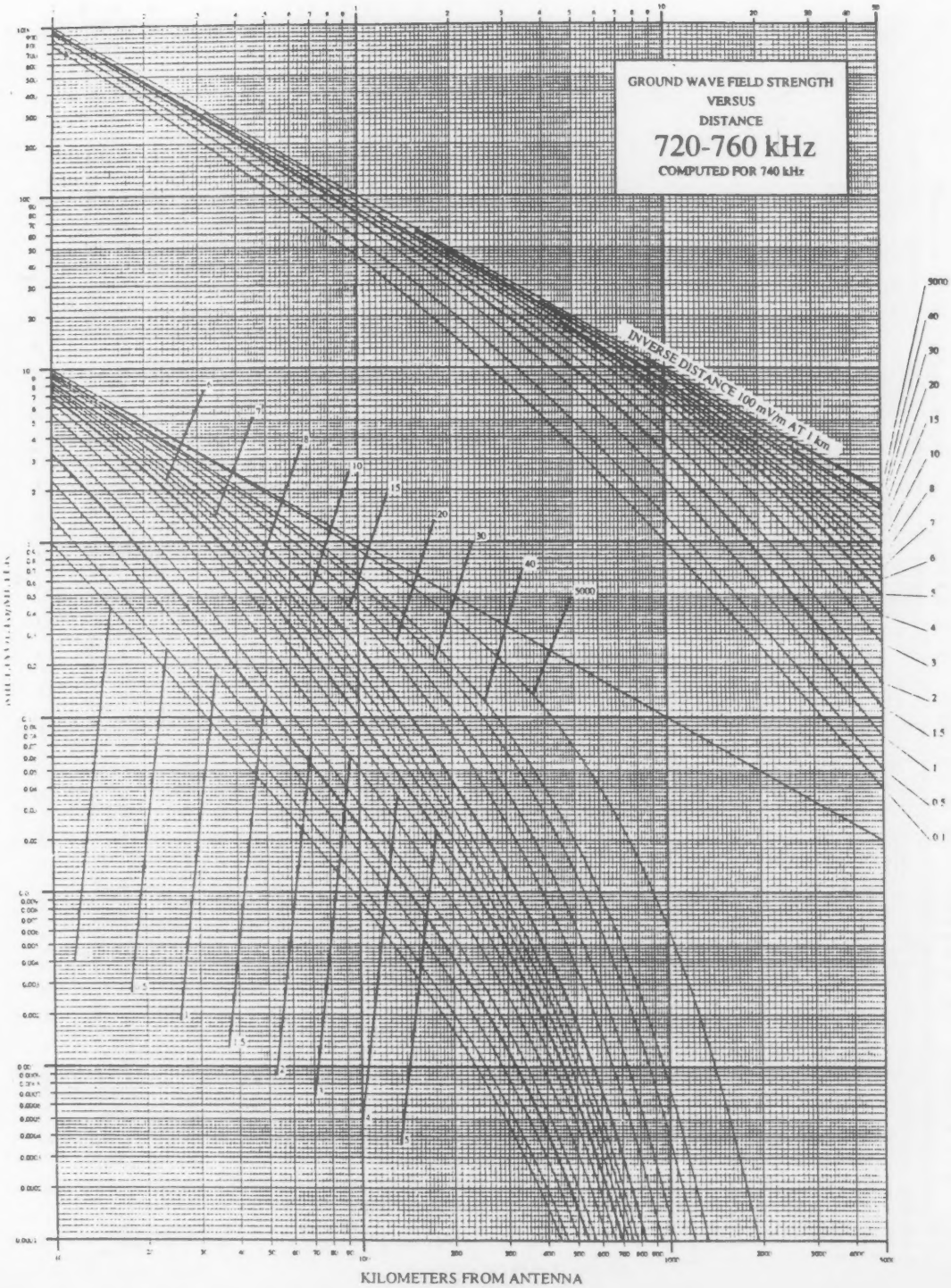

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GRAPH 7

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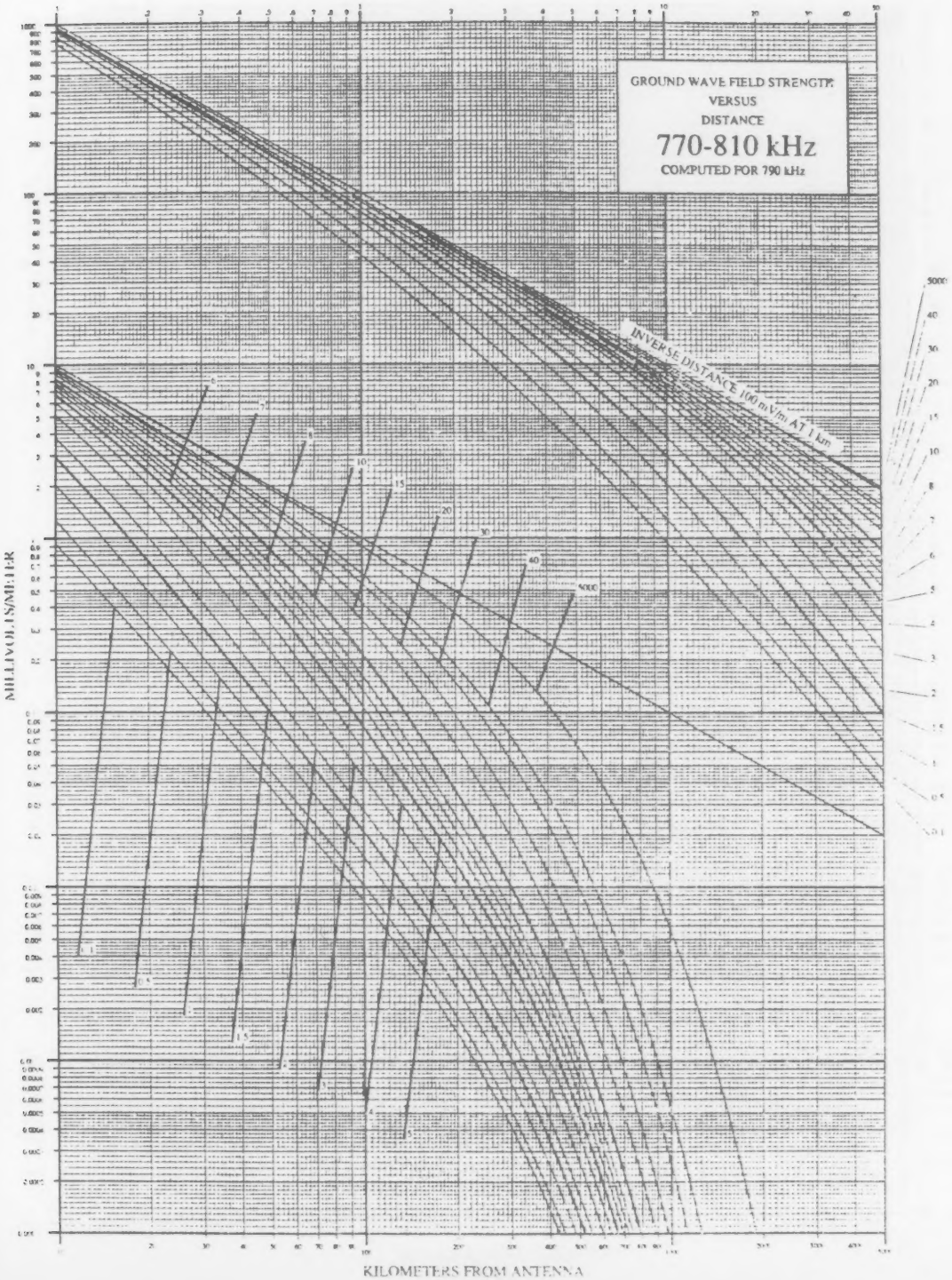

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GRAPH 8

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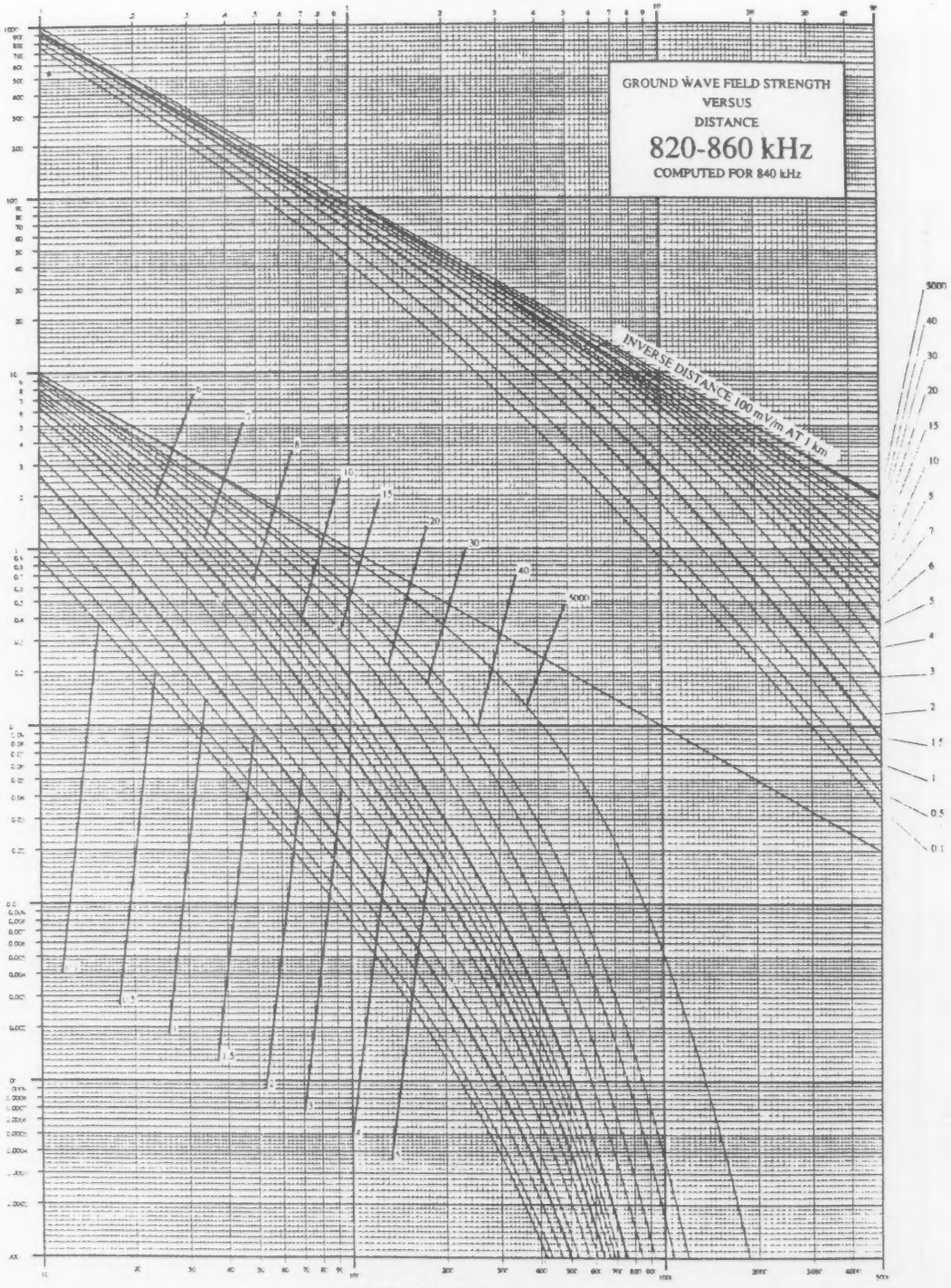
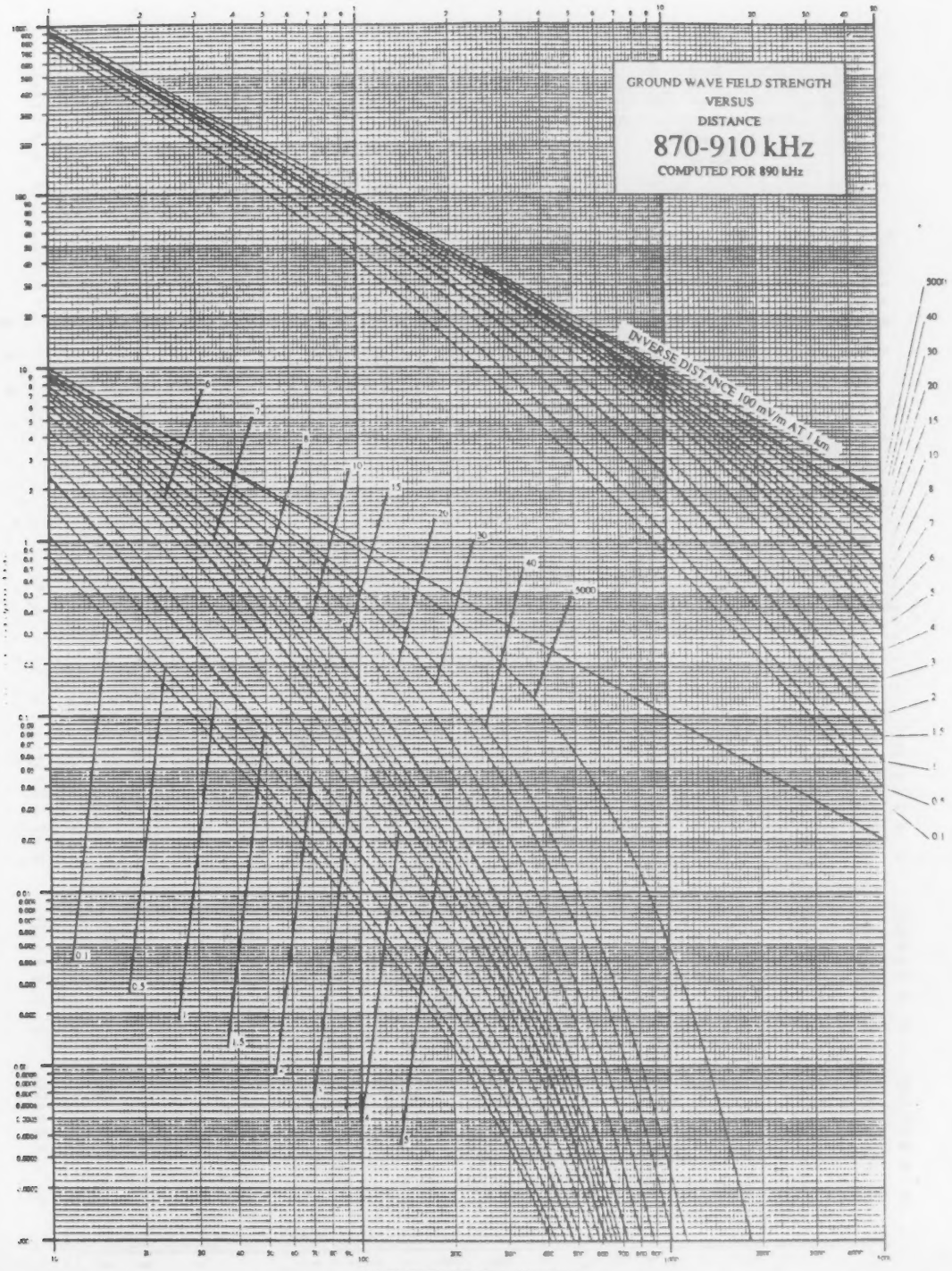


KILOMETERS FROM ANTENNA

GRAPH 9

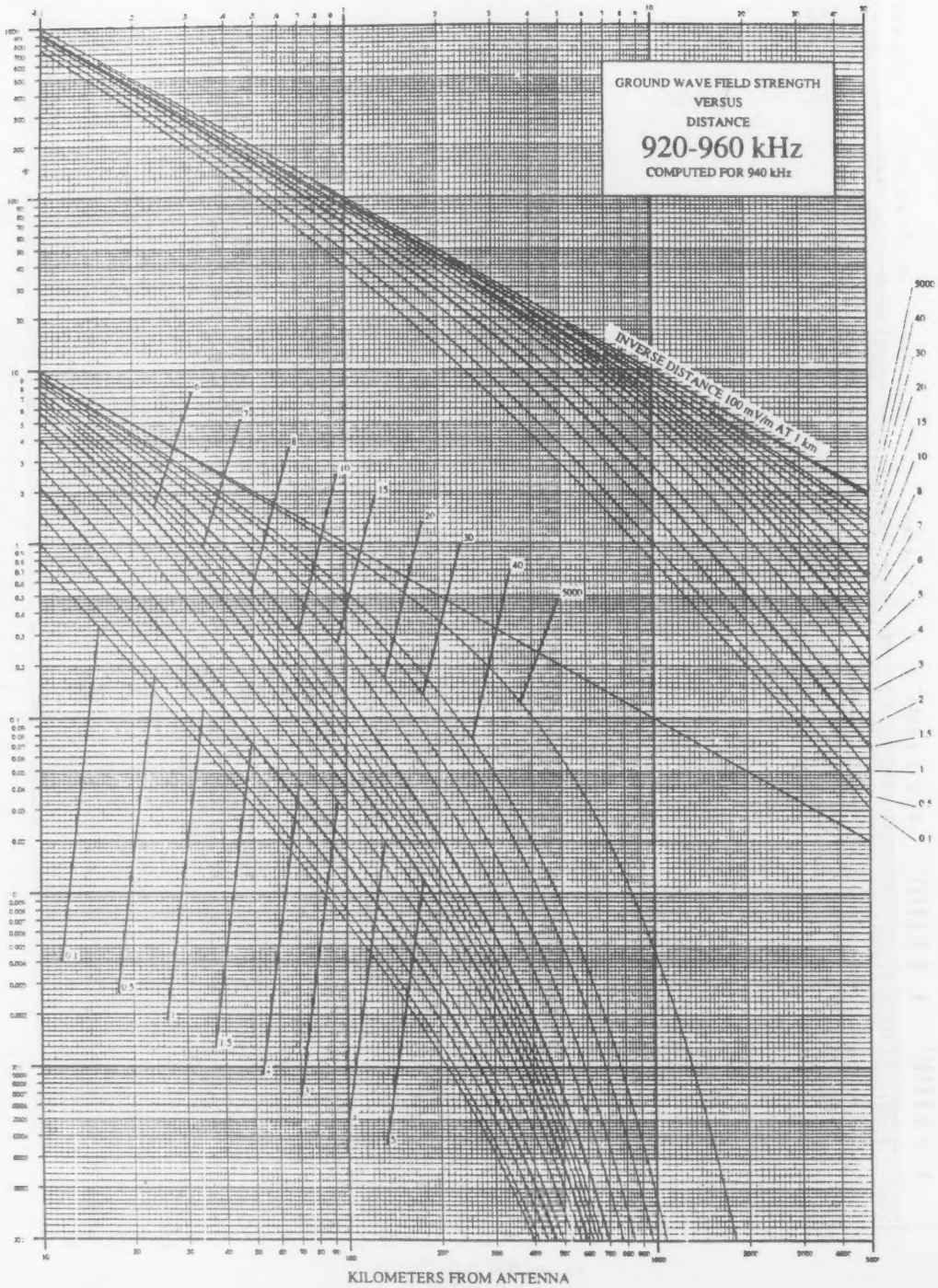
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 10

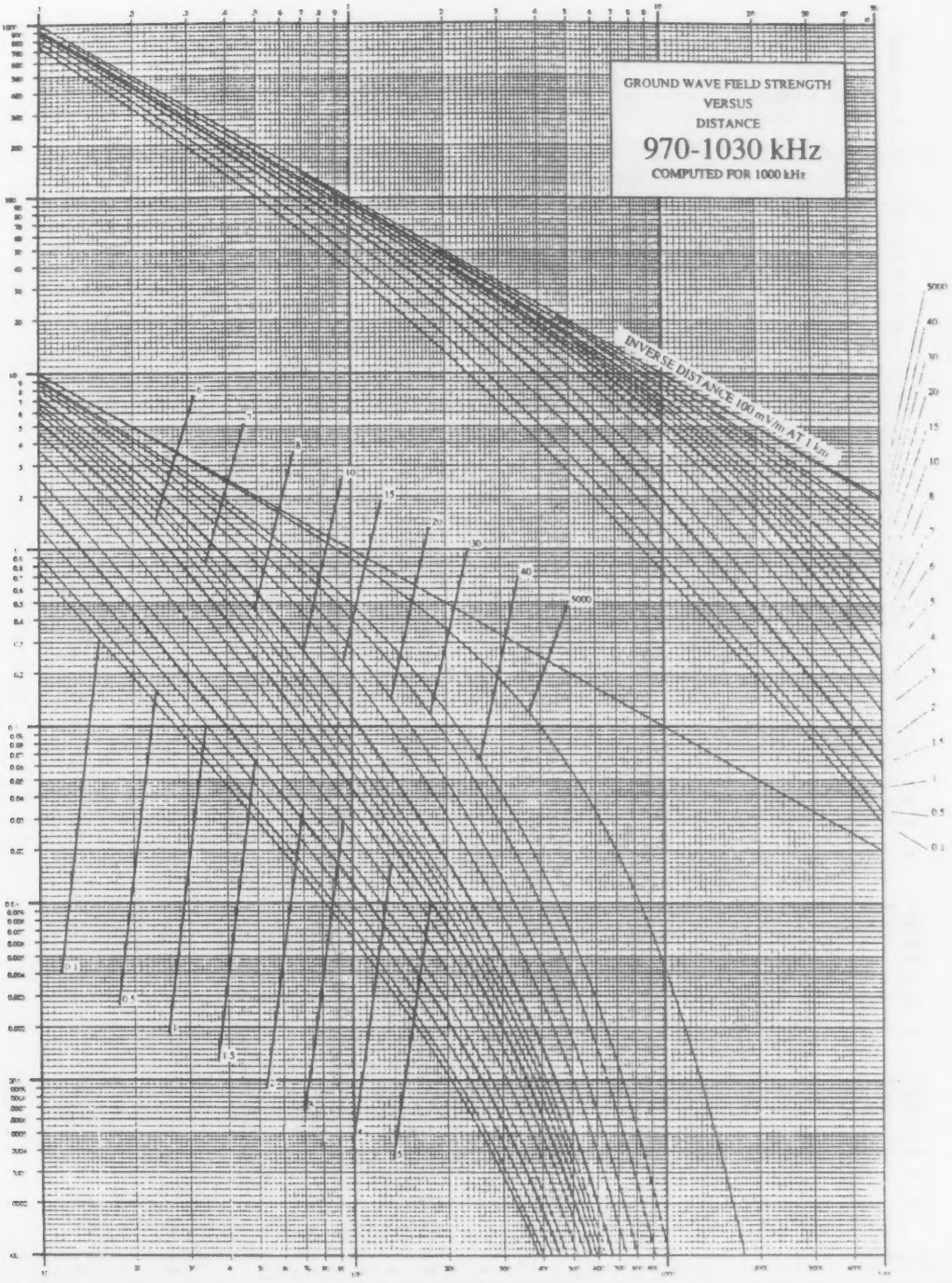
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 11

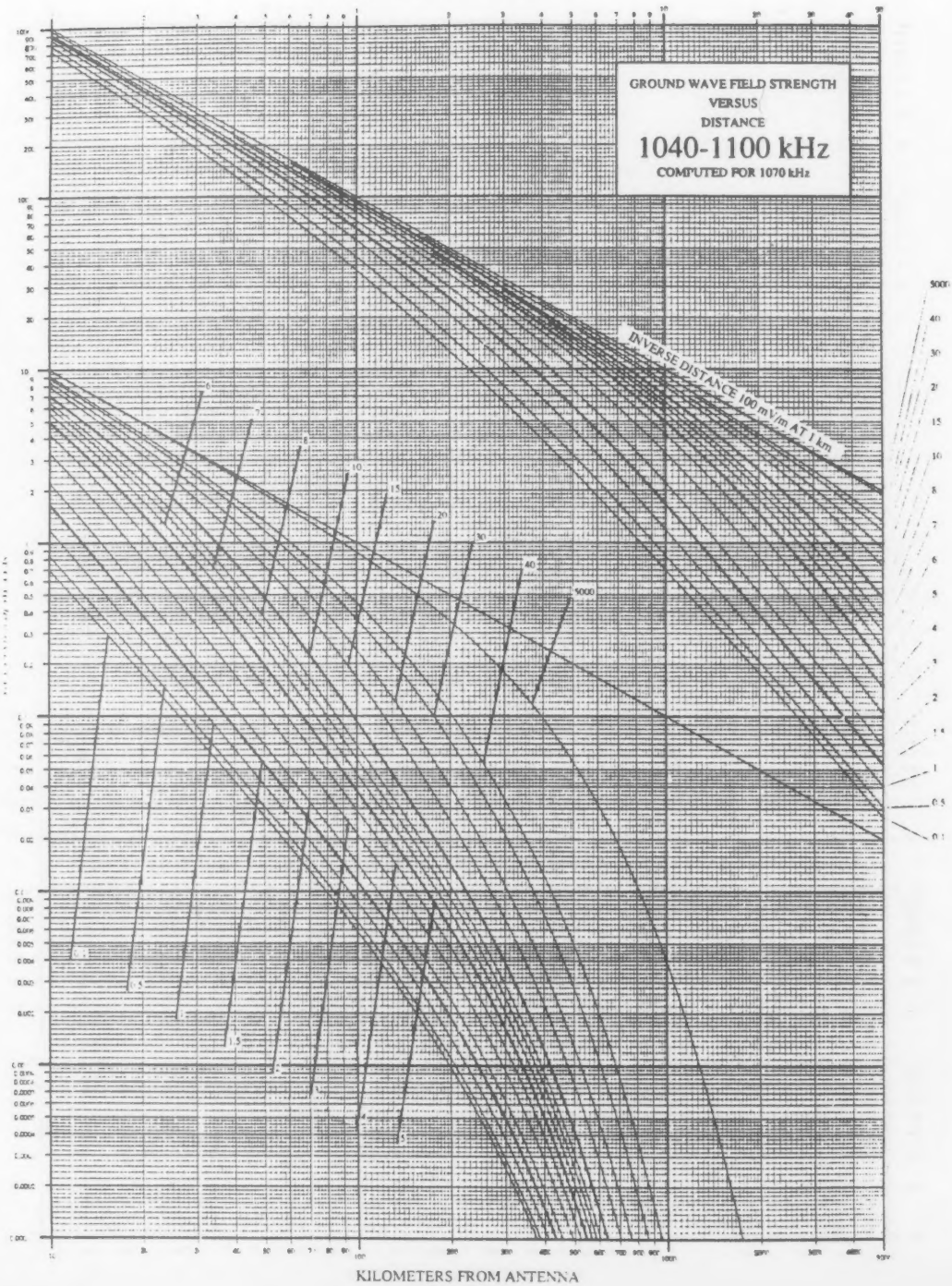
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 12

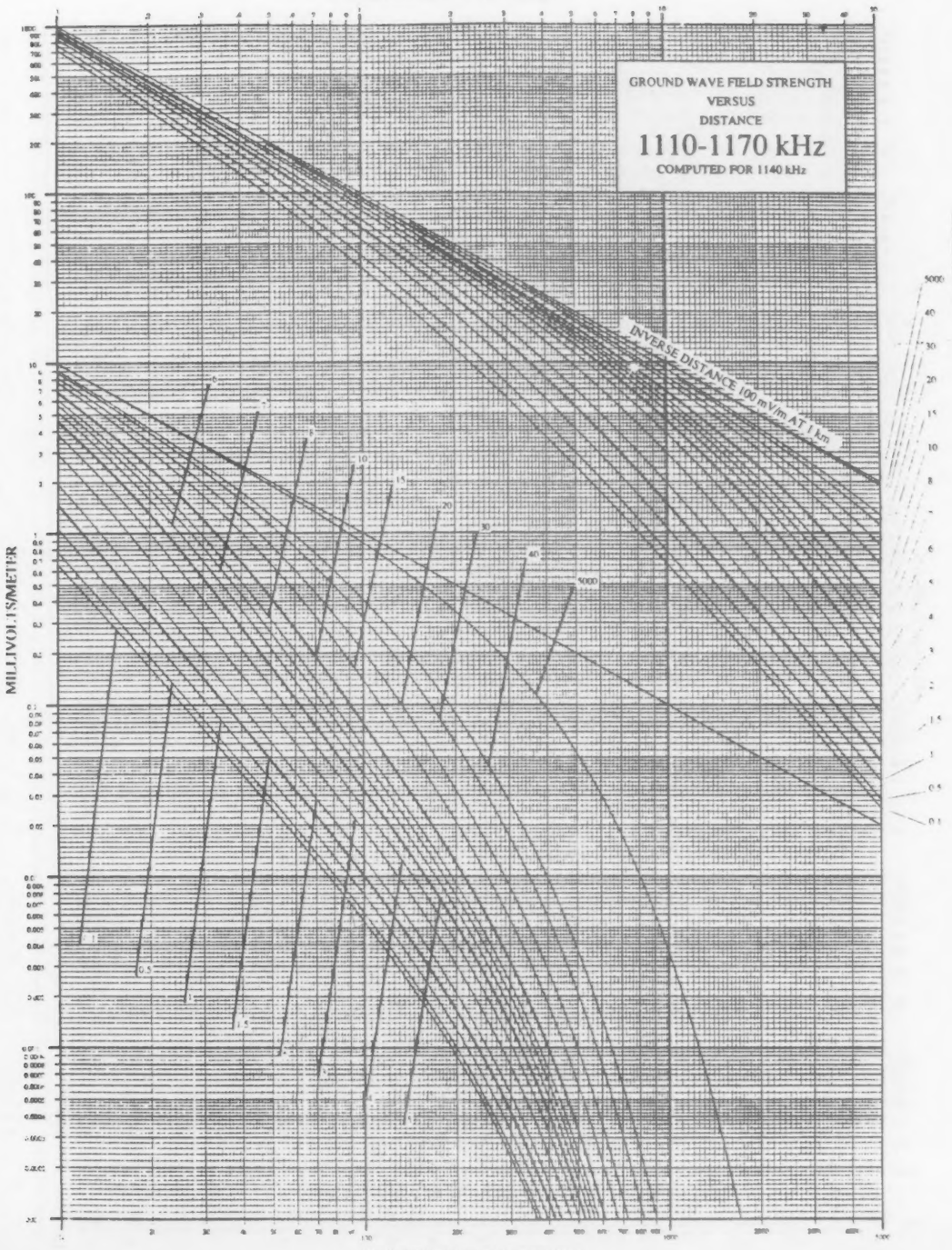
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 13

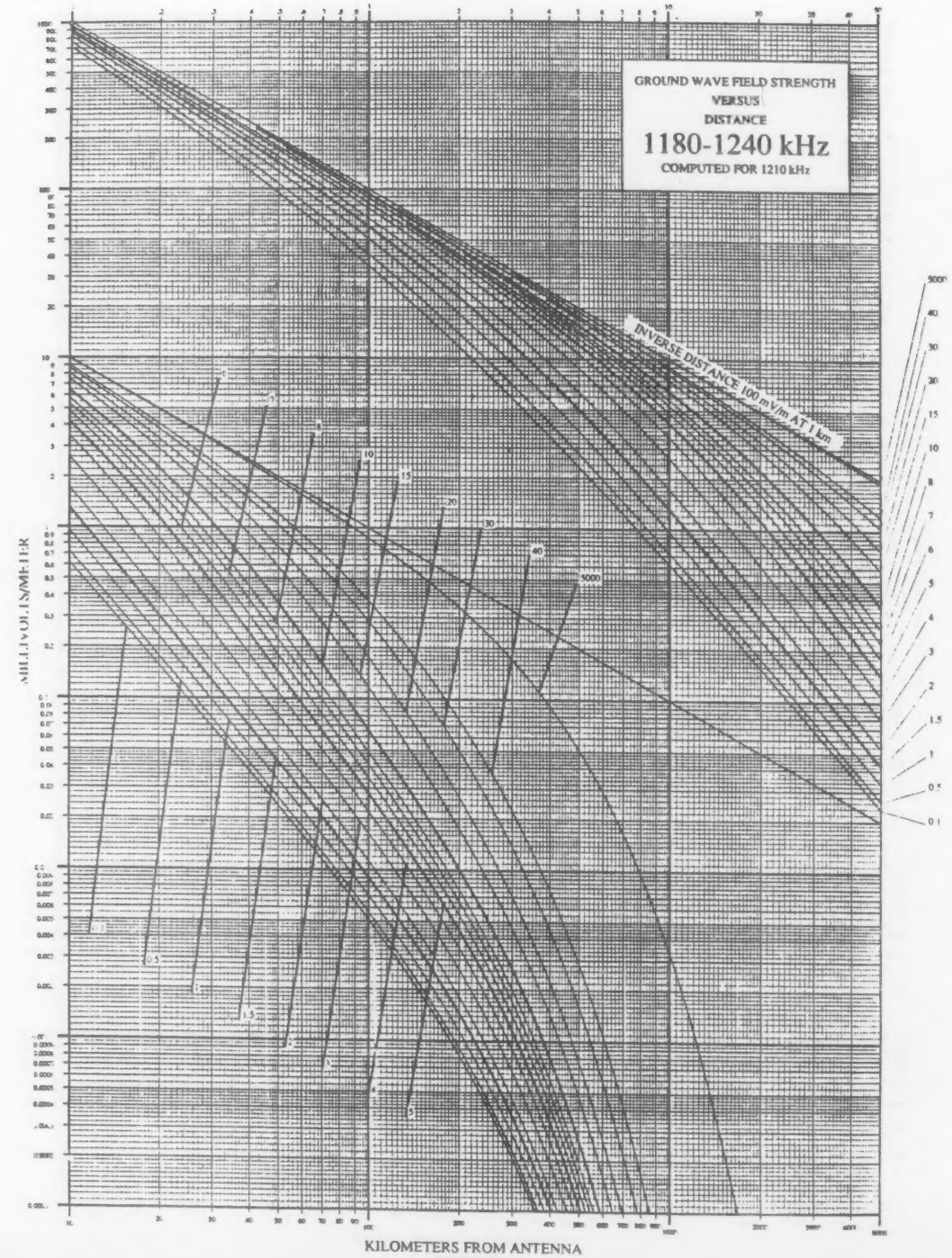
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 14

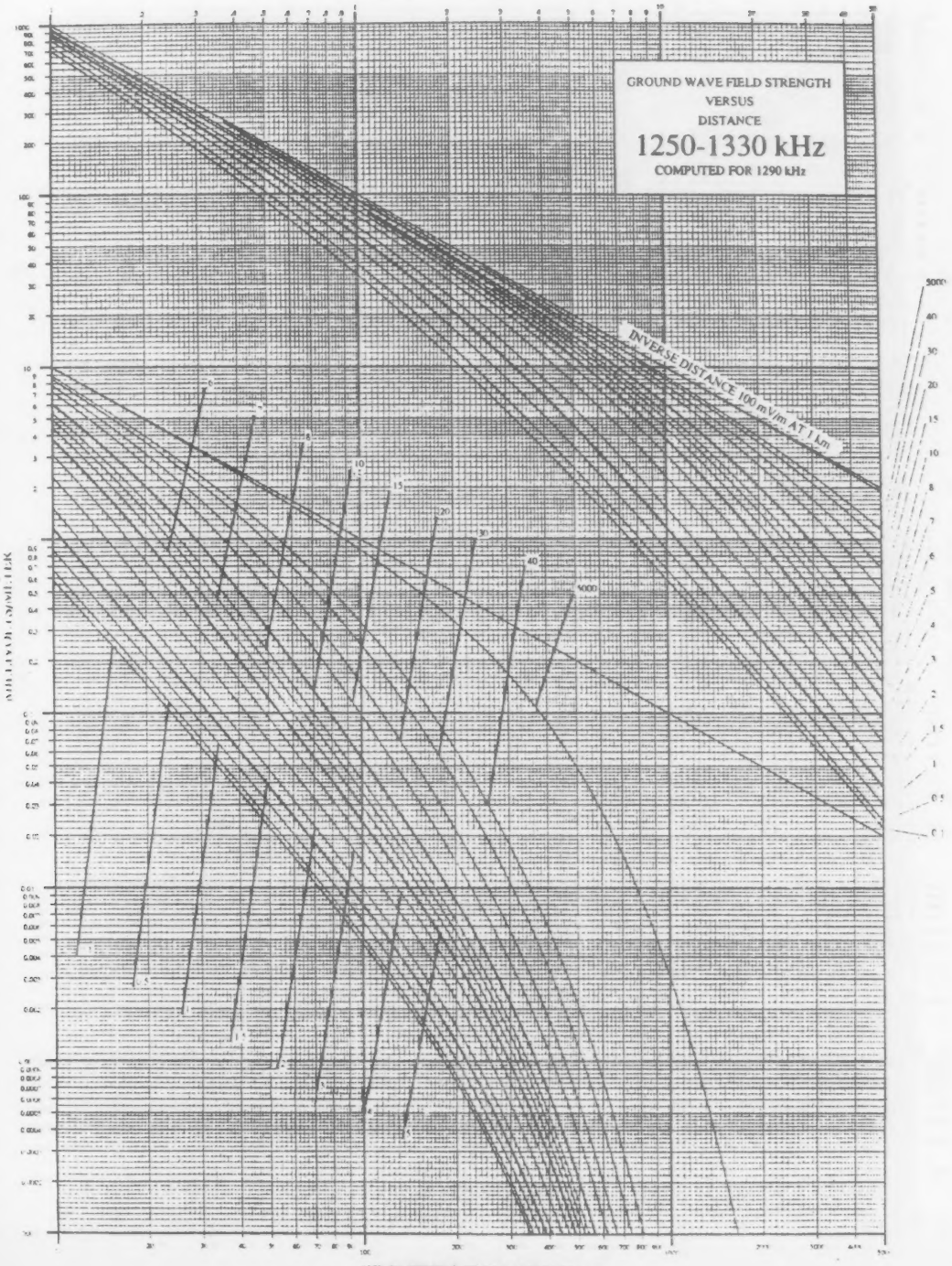
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 15

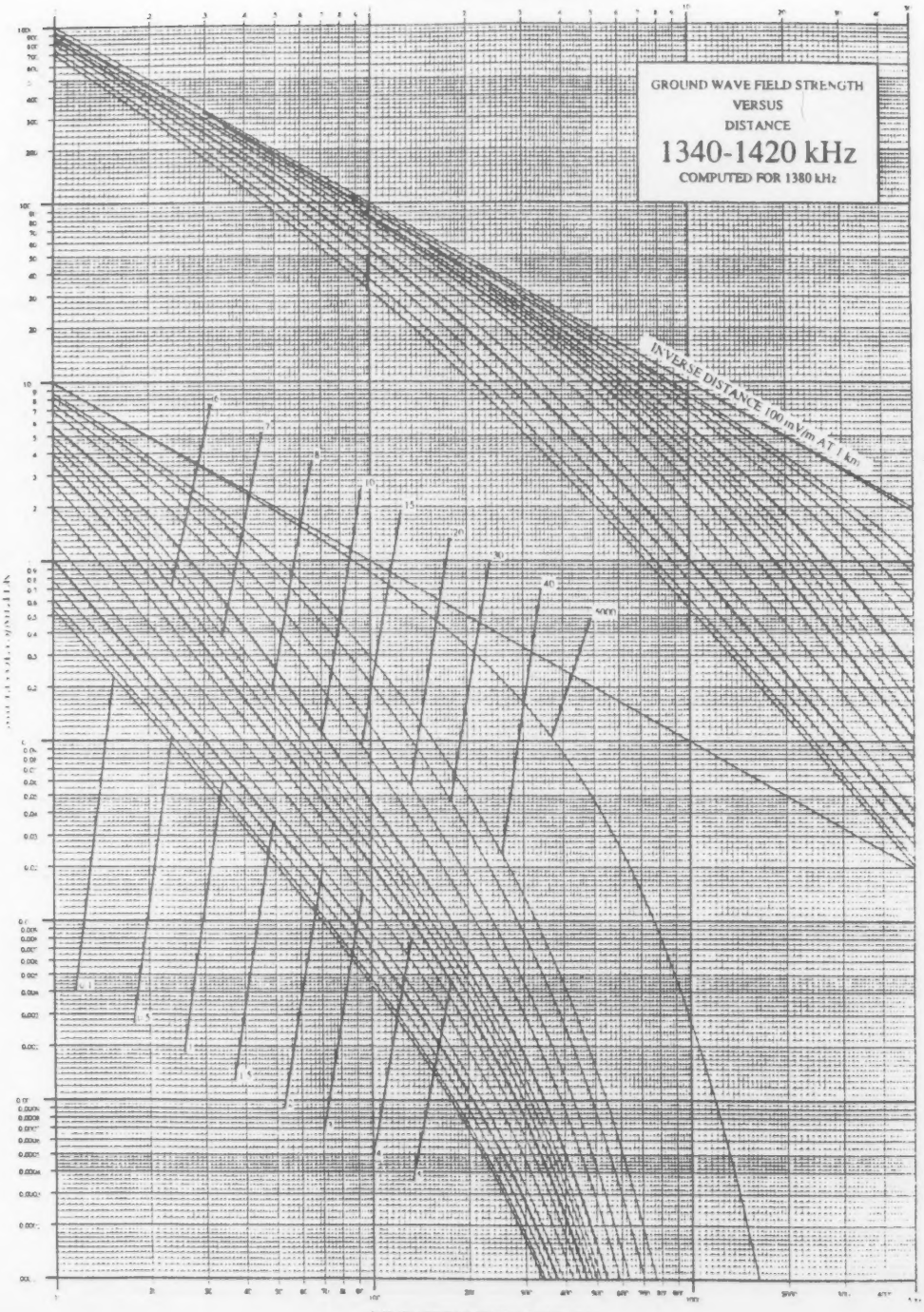
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 16

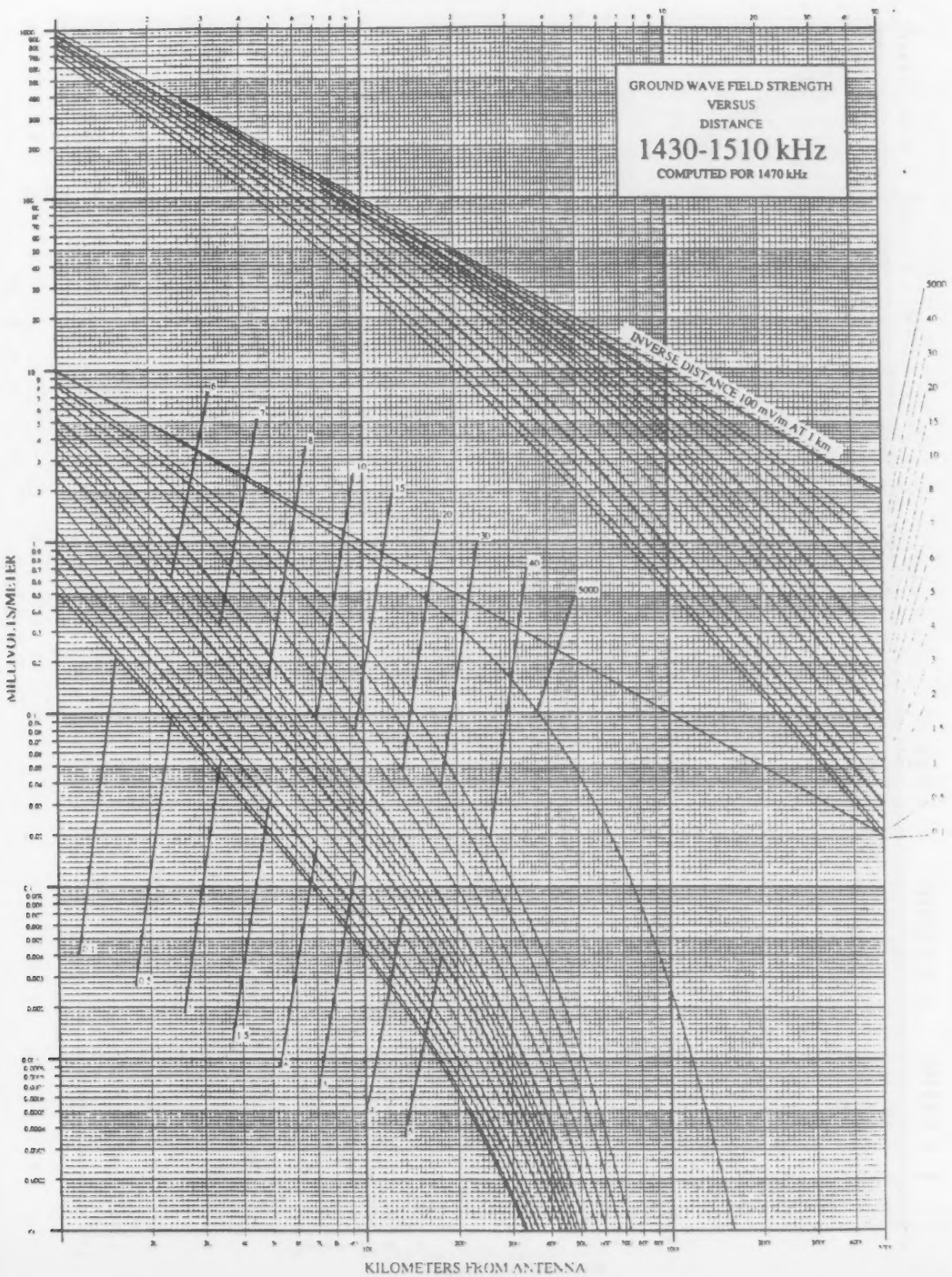
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 17

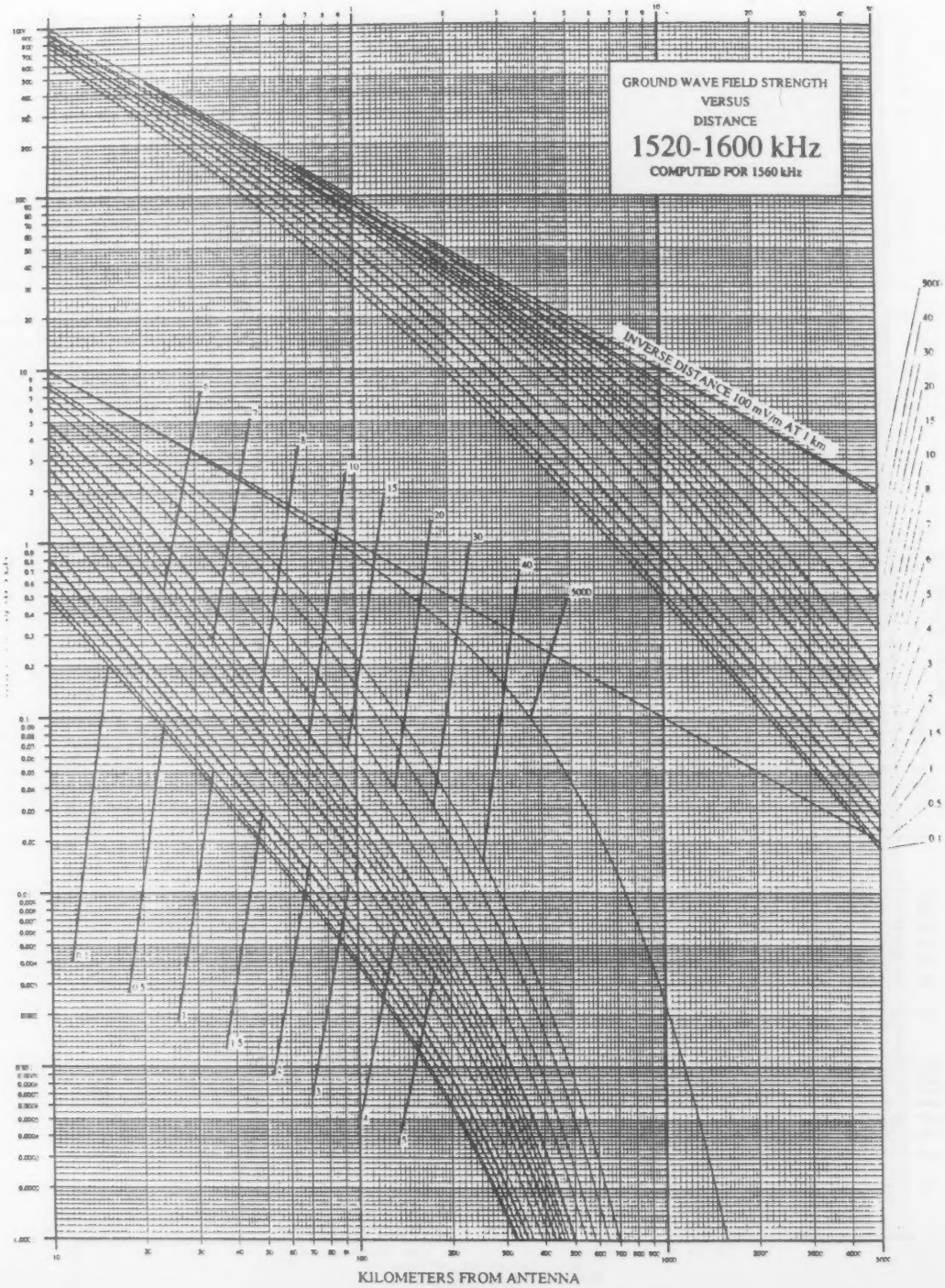
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 15

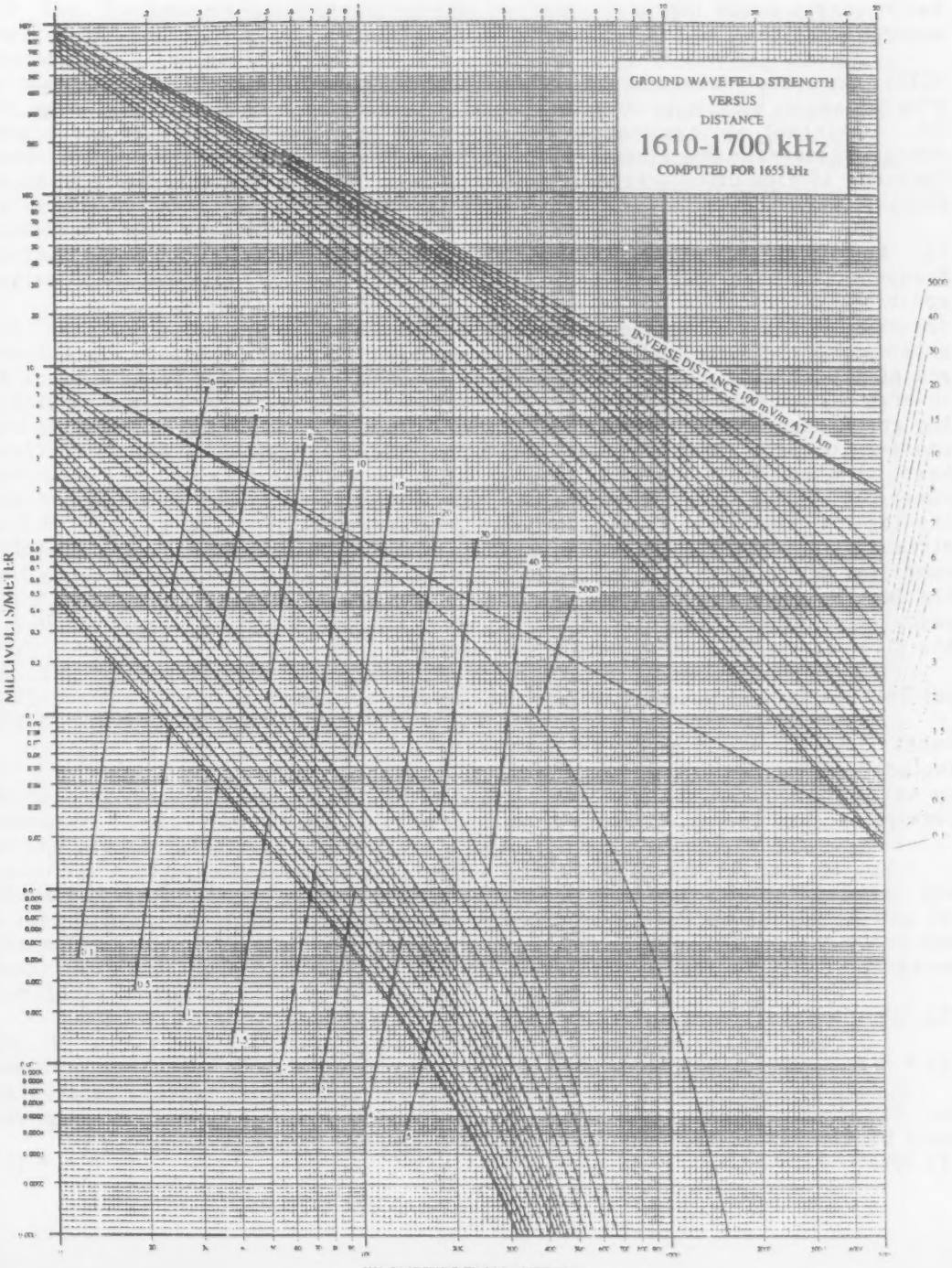
KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 19

KILOMETERS FROM ANTENNA



KILOMETERS FROM ANTENNA

GRAPH 20

earth curves would indicate. Thus, no attempt should be made to fit experimental data to these curves at the larger distances.

NOTE: For other values of dielectric constant use can be made of the computer program which was employed by the FCC in generating the curves in Graphs 1 to 20. A printout of this program can be ordered from the FCC official copy center whose name and address may be obtained by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 200554, (202) 632-7000.

(d) At sufficiently short distances (less than 55 kilometers at broadcast frequencies), such that the curvature of the earth does not introduce an additional attenuation of the waves, the curves of Graph 21 may be used for determining the groundwave field strength of transmitting and receiving antennas at the surface of the earth for any radiated power, frequency, or set of ground constants in the following manner: First, lay off the straight inverse distance line corresponding to the power radiated on transparent log-log graph paper similar to that of Graph 21, labelling the ordinates of the chart in terms of field strength, and the abscissae in terms of distance. Next, by means of the formulas given on Graph 21, calculate the value of the numerical distance, p, at 1 kilometer, and the value of b. Then superimpose the log-log chart over Graph 21, shifting it vertically until the inverse distance lines on both charts coincide and shifting it horizontally until the numerical distance at 1 kilometer on Graph 21 coincides with 1 kilometer on the log-log graph paper. The curve of Graph 21 corresponding to the calculated value of b is then traced on the log-log graph paper giving the field strength versus distance in kilometers.

(e) This paragraph consists of the following Graphs 1 to 20 and 21.

Note: The referenced graphs are not published in the CFR, nor will they be included in the Commission's automated rules system. Copies are available by calling or writing the Consumer Affairs Office, Federal Communications Commission, Washington, D.C. 20554, Telephone: (202) 632-7000.

30. Section 73.185 is amended by adding paragraph (c) to paragraph (b) and revising the new paragraph (b), by revising and redesignating paragraphs (d) and (e) as (c) and (d), by removing paragraphs (i) and (j), and revising and redesignating paragraphs (h) and (k) as (e) and (f), and by revising new paragraph (f)(2) to read as follows:

§73.185 Computation of interfering signal.

(a) * * *

(b) For skywave signals from stations operating on all channels, interference shall be determined from the appropriate formulas and Figure 6a contained in §73.190.

(c) The formulas in §73.190(d) depicted in Figure 6a of §73.190, entitled "Angles of Departure versus Transmission Range" are to be used in determining the angles in the vertical pattern of the antenna of an interfering station to be considered as pertinent to transmission by one reflection. To provide for variation in the pertinent vertical angle due to variations of ionosphere height and ionosphere scattering, the curves 2 and 3 indicate the upper and lower angles within which the radiated field is to be considered. The maximum value of field strength occurring between these angles shall be used to determine the multiplying factor to apply to the 10 percent skywave field intensity value determined from Formula 2 in §73.190. The multiplying factor is found by dividing the maximum radiation between the pertinent angles by 100 mV/m.

(d) Example of the use of skywave curves and formulas: Assume a proposed new Class B station from which interference may be expected is to be located at a distance of 724 kilometers from a licensed Class B station. The proposed station specifies geographic coordinates of 40° 00' 00" N and 100° 00' 00" W and the station to be protected is located at an azimuth of 45° true. The critical angles of radiation as determined from Figure 6a of §73.190 are 9.6° and 16.3°. If the vertical pattern of the antenna of the proposed station in the direction of the other station is such that, between the angles of 9.6° and 16.3° above the horizon the maximum radiation is 260 mV/m at one kilometer, the value of the 50% field, as derived from Formula 1 of §73.190, is 0.06127 mV/m at the location in question. To obtain the value of the 10% field, the 50% value must be adjusted by a factor derived from Formula 2 of §73.190. The value in this case is 8.42 dB. Thus, the 10% field is 0.1616 mV/m. Using this in conjunction with the co-channel protection ratio of 26 dB, the resultant night limit from the proposal to the licensed station is 3.232 mV/m which is in excess of 1.0 mV/m, the level permitted under §73.182(q) for new operations.

(e) In the case of an antenna which is intended to be non-directional in the horizontal plane, the vertical distribution of the relative fields should be computed pursuant to §73.160. In the case of an antenna which is directional in the horizontal plane, the vertical pattern in the great circle direction toward the point of reception in question must first be calculated. In cases where the radiation in the vertical plane, at the pertinent azimuth, contains a large lobe at a higher angle than the pertinent angle for one reflection, the method of calculating interference will not be restricted to that just described; each such case will be considered on the basis of the best knowledge available.

(f) In performing calculations to determine permissible radiation from stations operating presunrise or postsunset in accordance with §73.99, calculated diurnal factors will be multiplied by the values of skywave signals for such stations obtained from Formula 1 or 2 of §73.190.

(1) * * *

(2) Constants used in calculating diurnal factors for the presunrise and postsunset periods are contained in paragraphs (f)(2)(i) and (ii) respectively. The columns labeled T<mp> represents the number of hours before and after sunrise and sunset at the path midpoint.

* * * * *

31. Section 73.187 is amended by revising paragraphs (a)(1) and (2), (a)(2)(i), (a)(2)(ii), (a)(3), (a)(3)(i), (a)(3)(ii), and (b) to read as follows:

§73.187 Limitation on daytime radiation.

(a)(1) Except as otherwise provided in paragraphs (a)(2) and (3) of this section, no authorization will be granted for Class B or D facilities on a frequency specified in §73.25 if the proposed facilities would radiate during the period of critical hours (the two hours after local sunrise and the two hours before local sunset) toward any point on the 0.1 mV/m contour of a co-channel U.S. Class A station, at or below the pertinent vertical angle determined from Curve 2 of Figure 6a of §73.190, values in excess of those obtained as provided in paragraph (b) of this section.

(2) The limitation set forth in paragraph (a)(1) of this section shall not apply in the following cases:

(i) Any Class B or D facilities authorized before November 30, 1959; or

(ii) For Class B and D stations authorized before November 30, 1959, subsequent changes of facilities which do not involve a change in frequency, an increase in radiation toward any point on the 0.1 mV/m contour of a co-channel U.S. Class A station, or the move of transmitter site materially closer to the 0.1 mV/m contour of such Class A station.

(3) If a Class B or D station authorized before November 30, 1959, is authorized to increase its daytime radiation in any direction toward the 0.1 mV/m contour of a co-channel U.S. Class A station (without a change in frequency or a move of transmitter site materially closer to such contour), it may not, during the two hours after local sunrise or the two hours before local sunset, radiate in such directions a value exceeding the higher of:

(i) The value radiated in such directions with facilities last authorized before November 30, 1959, or

(ii) The limitation specified in paragraph (a)(1) of this section.

(b) To obtain the maximum permissible radiation for a Class B or D station on a given frequency from 640 through 990 kHz, multiply the radiation value obtained for the given distance and azimuth from the 500 kHz chart (Figure 9 of §73.190) by the appropriate interpolation factor shown in the K_{500} column

of paragraph (c) of this section; and multiply the radiation value obtained for the given distance and azimuth from the 1000 kHz chart (Figure 10 of §73.190) by the appropriate interpolation factor shown in the K_{1000} column of paragraph (c) of this section. Add the two products thus obtained; the result is the maximum radiation value applicable to the Class B or D station in the pertinent directions. For frequencies from 1010 to 1580 kHz, obtain in a similar manner the proper radiation values from the 1000 and 1600 kHz charts (Figures 10 and 11 of §73.190), multiply each of these values by the appropriate interpolation factors in the K'_{1000} and K'_{1600} columns in paragraph (c) of this section, and add the products.

* * * * *

32. Section 73.189 is amended by revising paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii), (b)(3), and (b)(6), to read as follows:

§73.189 Minimum antenna heights or field strength requirements.

* * * * *

(b) * * *

(2) * * *

(i) Class C stations, and stations in Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands on 1230, 1240, 1340, 1400, 1450 and 1490 kHz that were formerly Class C and were redesignated as Class B pursuant to §73.26(b), 45 meters or a minimum effective field strength of 241 mV/m for 1 kW (121 mV/m for 0.25 kW). (This height applies to a Class C station on a local channel only. Curve A shall apply to any Class C stations in the 48 conterminous States that are assigned to Regional channels.)

(ii) Class A (Alaskan) and Class B and Class D stations other than those covered in §73.189(b)(2)(i), a minimum effective field strength of 282 mV/m for 1 kW.

(iii) Class A stations, a minimum effective field strength of 362 mV/m for 1 kW.

(3) The heights given on the graph for the antenna apply regardless of whether the antenna is located on the ground or on a building. Except for the reduction of shadows, locating the antenna on a building does not necessarily increase the efficiency and where the height of the building is in the order of a quarter wave the efficiency may be materially reduced.

* * * * *

(6) The main element or elements of a directional antenna system shall meet the above minimum requirements with respect to height or effective field

strength. No directional antenna system will be approved which is so designed that the effective field of the array is less than the minimum prescribed for the class of station concerned, or in case of a Class A station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of §73.190 for operation on frequencies below 1000 kHz, and in the case of a Class B or D station less than 90 percent of the ground wave field which would be obtained from a perfect antenna of the height specified by Figure 7 of §73.190 for operation on frequencies below 750 kHz.

33. Section 73.190 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§73.190 Engineering charts and related formulas.

(a) This section consists of the following Figures: 2, r3, 5, 6a, 7, 8, 9, 10, 11, 12, and 13. Additionally, formulas that are directly related to graphs are included.

(b) Formula 1 is used for calculation of 50% skywave field strength values.

Formula 1. Skywave field strength, 50% of the time (at SS+6):

The skywave field strength, $F_c(50)$, for a characteristic field strength of 100 mV/m at 1 km is given by:

$$F_c(50) = (97.5 - 20\log D) - (2\pi + 4.95\tan^2\phi_M)\sqrt{(D/1000)} \ \text{dB}(\mu\text{V/m})$$

The slant distance, D, is given by:

$$D = \sqrt{40,000 + d^2} \ \text{km}$$

The geomagnetic latitude of the midpoint of the path, ϕ_M, is given by:

$$\phi_M = \arcsin[\sin a_M \sin 78.5^\circ + \cos a_M \cos 78.5^\circ \cos(69 + b_M)] \ \text{degrees}$$

The short great-circle path distance, d, is given by:

$$d = 111.18 d^\circ \ \text{km}$$

Where:

$$d^\circ = \arccos[\sin a_T \sin a_R + \cos a_T \cos a_R \cos(b_R - b_T)] \ \text{degrees}$$

Where:
a_T is the geographic latitude of the transmitting terminal (degrees)
a_R is the geographic latitude of the receiving terminal (degrees)
b_T is the geographic longitude of the transmitting terminal (degrees)
b_R is the geographic longitude of the receiving terminal (degrees)
a_M is the geographic latitude of the midpoint of the great-circle path and is given by:

$$a_M = 90 - \arccos\left[\sin a_R \cos\left(\frac{d^\circ}{2}\right) + \cos a_R \sin\left(\frac{d^\circ}{2}\right)\left\{\frac{\sin a_T - \sin a_R \cos d^\circ}{\cos a_R \sin d^\circ}\right\}\right] \ \text{degrees}$$

b_M is the geographic longitude of the midpoint of the great-circle path and is given by:

$$b_M = b_R + k\left[\arccos\left(\frac{\cos\left(\frac{d^\circ}{2}\right) - \sin a_R \sin a_M}{\cos a_R \cos a_M}\right)\right] \ \text{degrees}$$

Note(1): If $|\phi_M|$ is greater than 60 degrees, equation (1) is evaluated for $|\phi_M| = 60$ degrees.
Note(2): North and east are considered positive; south and west negative.
Note(3): In equation (7), $k = -1$ if $b_R > b_T$, otherwise $k = 1$.

(b) Formula 2 is used for calculation of 10% skywave field strength values.

Formula 2. Skywave field strength, 10% of the time (at SS+6):

The skywave field strength, $F_c(10)$, is given by:

$$F_c(10) = F_c(50) + \Delta \text{ dB}(\mu\text{V/m})$$

Where:
$\Delta = 6$ when $|\phi_M| < 40$
$\Delta = 0.2|\phi_M| - 2$ when $40 \leq |\phi_M| \leq 60$
$\Delta = 10$ when $|\phi_M| > 60$

* * * * *

(e) In the event of disagreement between computed values using the formulas shown above and values obtained directly from the figures, the computed values will control.

34. Section 73.1030 is amended by revising the table in paragraph (b) to read as follows:

§73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

* * * * *

(b) * * *

Frequency range	Field strength	Power flux density * 2/
Below 540 kHz	10	-65.8
540 to 1700 kHz	20	-59.8
1.7 to 470 MHz	10	**-65.8
470 to 890 MHz	30	**-56.2
Above 890 MHz	1	**-85.8

1/ (mV/m) in authorized bandwidth of service.

2/ (dBW/m^2) in authorized bandwidth of service.

* Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 = 120 ohms.

** Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

* * * * *

35. Section 73.1125 is amended by adding a note to read as follows:

§73.1125 Station main studio location.

* * * * *

Note: AM stations licensed to a community which simulcast using a frequency in the 535-1605 kHz band along with a frequency in the 1605-1705 kHz band need only have the studio be located within the 5 mV/m contour of the lower band operation during the term of the simultaneous operating authority. Upon termination of the 535-1605 kHz band portion of the multiple frequency operation, the above rule shall then become applicable to the remaining operation in the 1605-1705 kHz band.

36. A new paragraph (c) is added to Section 73.1150 to read as follows:

§73.1150 Transferring a station.

* * * * *

(c) Licensees and/or permittees authorized operation in the 535-1605 kHz band along with operation in the 1605-1705 kHz band pursuant to the Report and Order MM Docket 87-267 will not be permitted to assign or transfer control of

the license or permit for a single frequency during the period that joint operation is authorized.

37. Section 73.1201 is amended by revising paragraph (c)(2) to read as follows:

§73.1201 Station identification.

* * * * *

(c) * * *

(2) Simultaneous AM (535-1605 kHz) and AM (1605-1705 kHz) broadcasts. If the same licensee operates an AM broadcast station in the 535-1605 kHz band and an AM broadcast station in the 1605-1705 kHz band with both stations licensed to the same community and simultaneously broadcasts the same programs over the facilities of both such stations, station identification announcements may be made jointly for both stations for periods of such simultaneous operation.

* * * * *

38. Paragraph (b)(1)ii) of Section 73.1570 is revised to read as follows:

§73.1570 Modulation levels: AM, FM, and TV aural.

* * * * *

(b) * * *

(1) * * *

(ii) For AM stations transmitting telemetry signals for remote control or automatic transmission system operation, the amplitude of modulation of the carrier by the use of subaudible tones must not be higher than necessary to effect reliable and accurate data transmission and may not, in any case, exceed 6%.

* * * * *

39. Section 73.1650 is amended by revising paragraph (b)(2) and adding paragraphs (b)(2)(i) and (b)(2)(ii) to read as follows:

§73.1650 International broadcasting agreements.

* * * * *

(b) * * *

(2) Regional Agreements for the Broadcasting Service in Region 2:

(i) MF Broadcasting 535-1605 kHz, Rio de Janeiro, 1981.

(ii) MF Broadcasting 1605-1705 kHz, Rio de Janeiro, 1988.

* * * * *

40. A note is added at the end of Section 73.1665 to read as follows:

§73.1665 Main transmitters.

* * * * *

Note: Pending the availability of AM broadcast transmitters that are type-accepted for use in the frequency band 1605-1705 kHz, transmitters which appear on the FCC's "Radio Equipment List" that are type-accepted for use in the 535-1605 kHz band may be utilized in the 1605-1705 kHz band if it can be shown that the requirements of §73.44 have been met. Positive outcome of the manufacturer's application for type-acceptance will supersede the applicability of this note.

41. Paragraph (c) in Section 73.1705 is revised to read as follows:

§73.1705 Time of operation.

* * * * *

(c) AM stations in the 535-1705 kHz band will be licensed for unlimited time. In the 535-1605 kHz band, stations that apply for share time and specified hours operations may also be licensed. AM stations licensed to operate daytime-only and limited-time may continue to do so; however, no new such stations will be authorized.

42. Section 73.1725 is revised to read as follows:

§73.1725 Limited time.

(a) Operation is applicable only to Class B (secondary) AM stations on a clear channel with facilities authorized before November 30, 1959. Operation of the secondary station is permitted during daytime and until local sunset if located west of the Class A station on the channel, or until local sunset at the dominant station if located east of that station. Operation is also permitted during nighttime hours not used by the Class A station or stations on the channel.

(b) No authorization will be granted for:

(1) A new limited time station;

(2) A limited time station operating on a changed frequency;

(3) A limited time station with a new transmitter site materially closer to the 0.1 mV/m contour of a co-channel U.S. class A station; or

(4) Modification of the operating facilities of a limited time station resulting in increased radiation toward any point on the 0.1mV/m contour of a co-channel U.S. class A station during the hours after local sunset in which the limited time station is permitted to operate by reason of location east of the class A station.

(c) The licensee of a secondary station which is authorized to operate limited time and which may resume operation at the time the Class A station (or stations) on the same channel ceases operation shall, with each application for renewal of license, file in triplicate a copy of its regular operating schedule. It shall bear a signed notation by the licensee of the Class A station of its objection or lack of objection thereto. Upon approval of such operating schedule, the FCC will affix its file mark and return one copy to the licensee authorized to operate limited time. This shall be posted with the station license and considered as a part thereof. Departure from said operating schedule will be permitted only pursuant to §73.1715 (Share time).

43. Section 73.1740 is amended by revising paragraph (a)(1)(i) to read as follows:

§73.1740 Minimum operating schedule.

(a) * * *

(1) * * *

(i) Class D stations which have been authorized nighttime operations need comply only with the minimum requirements for operation between 6 a.m. and 6 p.m., local time.

* * * * *

44. New paragraphs (c) and (d) and Notes 1 and 2 are added to Section 73.3517 to read as follows:

§73.3517 Contingent applications.

* * * * *

(c) Upon payment of the filing fees prescribed in §1.1111 of this chapter, the Commission will accept two or more applications filed by existing AM licensees for modification of facilities that are contingent upon granting of both, if

granting such contingent applications will reduce interference to one or more AM stations or will otherwise increase the area of interference-free service. The applications must state that they are filed pursuant to an interference reduction arrangement and must cross-reference all other contingent applications.

(d) Modified proposals curing conflicts between mutually exclusive clusters of applications filed in accordance with section (c) will be accepted for 60 days following issuance of a public notice identifying such conflicts.

Note 1: No application to move to a frequency in the 1605-1705 kHz band may be part of any package of contingent applications associated with a voluntary agreement.

Note 2: In cases where no modified proposal is filed pursuant to section (d), the Commission will grant the application resulting in the greatest net interference reduction.

45. Paragraph (i) in Section 73.3550 is revised to read as follows:

§73.3550 Requests for new or modified call sign assignments.

* * * * *

(i) Stations in different broadcast services (or operating jointly in the 535-1605 kHz band and in the 1605-1705 kHz band) which are under common control may request that their call signs be conformed by the assignment of the same basic call sign if that call sign is not being used by a non-commonly owned station. For the purposes of this paragraph, 50% or greater common ownership shall constitute a prima facie showing of common control.

* * * * *

46. Section 73.3555 is amended by revising Note 4 and adding new Notes 8 and 9 and 10 to read as follows:

§73.3555 Multiple ownership.

* * * * *

Note 4: Paragraphs (a) through (d) of this section will not be applied to require divestiture, by any licensee, of existing facilities, and will not apply to applications for increased power for Class C stations, to applications for assignment of license or transfer of control filed in accordance with §73.3540(f) or §73.3541(b) of this part, or to applications for assignment of license or transfer of control to heirs or legatees by will or intestacy if no new or increased overlap would be created between commonly owned, operated, or controlled broadcast stations in the same service and if no new encompassment of communities proscribed in paragraphs (b) and (c) of

this section as to commonly owned, operated, or controlled broadcast stations or daily newspapers would result. Said paragraphs will apply to all applications for new stations, to all other applications for assignment or transfer, and to all applications for major changes in existing stations except major changes that will result in overlap of contours of broadcast stations in the same service with each other no greater than already existing. (The resulting areas of overlap of contours of such broadcast stations with each other in such major change cases may consist partly or entirely of new terrain. However, if the population in the resulting overlap areas substantially exceeds that in the previously existing overlap areas, the Commission will not grant the application if it finds that to do so would be against the public interest, convenience, or necessity.) Commonly owned, operated, or controlled broadcast stations, with overlapping contours or with community-encompassing contours prohibited by this section may not be assigned or transferred to a single person, group, or entity, except as provided above in this note. If a commonly owned, operated, or controlled broadcast station and daily newspaper fall within the encompassing proscription of this section, the station may not be assigned to a single person, group or entity if the newspaper is being simultaneously sold to such single person, group or entity.

* * * * *

Note 8: Paragraph (a)(1) of this section will not apply to an application for an AM radio license in the 535-1605 kHz band where grant of such application will result in the overlap of 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled if the applicant shows that a significant reduction in interference to adjacent or co-channel stations would accompany such common ownership. Such AM overlap cases will be considered on a case-by-case basis to determine whether common ownership, operation or control of the stations in question would be in the public interest. Applicants in such cases must submit a contingent application for the major or minor facilities change needed to achieve the interference reduction along with the application which seeks to create the 5 mV/m overlap situation.

Note 9: Paragraph (a)(1) of this section will not apply to an application for an AM radio license in the 1605-1705 kHz band where grant of such application will result in the overlap of the 5 mV/m groundwave contours of the proposed station and that of another AM station in the 535-1605 kHz band that is commonly owned, operated or controlled. Paragraphs (d)(1)(i) and (d)(1)(ii) of this section will not apply to an application for an AM radio license in the 1605-1705 kHz band by an entity that owns, operates, controls or has a cognizable interest in AM radio stations in the 535-1605 kHz band.

Note 10: Authority for joint ownership granted pursuant to Note 9 will expire at 3:00 a.m. local time on the fifth anniversary of the date of issuance of a construction permit for an AM radio station in the 1605-1705 kHz band.

47. Section 73.3564 is amended by adding a new paragraph (e) to read as follows:

§73.3564 Acceptance of applications.

* * * * *

(e) Applications for operation in the 1605-1705 kHz band will be accepted only if filed pursuant to the terms of §73.30(b).

48. Section 73.3570 is redesignated as Section 73.23.

49. Section 73.3571 is amended by revising paragraphs (a), and (a)(1), by adding a new paragraph (a)(3), by removing paragraphs (d)(1), (d)(4), and (e), by revising and redesignating paragraphs (d)(2) and (d)(3) as (d)(1) and (d)(2), by redesignating paragraphs (f) through (i) as (e) through (h) and revising new paragraphs (f) and (h), by redesignating paragraphs (j)(1), (j)(2), (j)(3), and (j)(4) as (i)(1), (i)(2), (i)(3), and (i)(4) and revising the text of new paragraph (i)(1), and by redesignating paragraphs (k) and (l) as paragraphs (j) and (k) to read as follows:

§73.3571 Processing of AM broadcast station applications.

(a) Applications for AM broadcast facilities are divided into three groups.

(1) In the first group are applications for new stations or for major changes in the facilities of authorized stations. A major change is any increase in power except where accompanied by complementary reduction of antenna efficiency which leads to the same amount, or less, radiation in all directions (in the horizontal and vertical planes when skywave propagation is involved, and in the horizontal plane only for daytime considerations), relative to the presently authorized radiation levels], or any change in frequency, hours of operation, or community of license. However, the FCC may, within 15 days after the acceptance for filing of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore is subject to the provisions of §§73.3580 and 1.1111 pertaining to major changes.

(2) * * *

(3) The third group consists of applications for operation in the 1605-1705 kHz band which are filed subsequent to Commission notification that allotments have been awarded to petitioners under the procedure specified in §73.30.

* * * * *

(d) Applications proposing to increase the power of an AM station are subject to the following requirements:

(1) In order to be acceptable for filing, any application which does not involve a change in site must propose at least a 20% increase in the station's nominal power.

(2) Applications involving a change in site are not subject to the requirements in paragraph (d)(1) of this section.

* * * * *

(f) Applications for change of license to change hours of operation of a Class C station, to decrease hours of operation of any other class of station, or to change station location involving no change in transmitter site will be considered without reference to the processing line.

* * * * *

(h) When an application which has been designated for hearing has been removed from the hearing docket, the application will be returned to its proper position (as determined by the file number) in the processing line. Whether or not a new file number will be assigned will be determined pursuant to paragraph (i) of this section, after the application has been removed from the hearing docket.

(i)(1) A new file number will be assigned to an application for a new station, or for major changes in the facilities of an authorized station, when it is amended to change frequency, to increase power, to increase hours of operation, or to change station location. Any other amendment modifying the engineering proposal, except an amendment regarding the type of equipment specified, will also result in the assignment of a new file number unless such amendment is accompanied by a complete engineering study showing that the amendment would not involve new or increased interference problems with existing stations or other applications pending at the time the amendment is filed. If, after submission and acceptance of such an engineering amendment, subsequent examination indicates new or increased interference problems with either existing stations or other applications pending at the time the amendment was received at the FCC, the application will then be assigned a new file number and placed in the processing line according to the numerical sequence of the new file number.

* * * * *

50. New paragraph (c) is added to Section 73.3598 to read as follows:

§73.3598 Period of construction.

* * * * *

(c) An existing AM station operating in the 535-1605 kHz band that receives a conditional permit to operate in the 1605-1705 kHz band; such

permit shall specify a period of not more than 18 months from the date of issuance of the original construction permit within which construction shall be completed and application for license filed.

51. Section 73.4160 is removed.

52. Section 73.4255 is revised to read as follows:

§73.4255 Tax certificates: Issuance of.

(a) See Public Notice, FCC 76-337, dated April 21, 1976. 59 FCC 2d, 91; 41 FR 17605, April 27, 1976.

(b) See Report and Order MM Docket 87-267, FCC -- adopted, . FCC Rcd ; FR . .

Part 90 of Title 47 of the CFR is amended as follows:

53. The authority citiation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

54. Section 90.17(b) is amended by adding 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690 and 1700 kHz in the Table of Frequencies as follows:

§90.17 Local Government Radio Service

(a) * * * * *

(b) Frequencies available.

* * * * *

Local Government Radio Service Frequency Table

Frequency or band	Class of station(s)	Limitations
Kilohertz:		
530	Base (T.I.S.)	23
1610	do	23
1620	do	23
1630	do	23
1640	do	23
1650	do	23
1660	do	23
1670	do	23
1680	do	23
1690	do	23
1700	do	23
2726	Base or Mobile	1

* * * * *

55. Section 90.242 is amended by revising the first sentence of (a), the first sentence of (a)(2)(i), and (a)(2)(ii) to read as follows:

§90.242 Travelers Information Stations.

(a) The frequencies 530, 1610, 1620, 1630, 1640, 1650, 1660, 1670, 1680, 1690, and 1700 kHz. * * *

* * * * *

(a)(2)(i) A statement certifying that the transmitting site of the Travelers Information will be located at least 15.0 km (9.3 miles) measured orthogonally

outside the measured 0.5 mV/meter daytime contour of any AM broadcast station operating on a first adjacent channel or at least 130 km (80.6 miles) outside the measured 0.5 mV/m daytime contour of any AM broadcast station operating on the same channel. * * *

(a)(2)(ii) In consideration of possible cross-modulation and inter-modulatioon interference effects which may result from the operation of a Travelers Information Station in the vicinity of an AM broadcast station on the second or third adjacent channel, the applicant shall certify that he has considered these possible interference effects and, to the best of his knowledge, does not forsee harmful interference occuring to broadcast stations operating on second or third adjacent channels.

* * * * *

Appendix 6

Initial Regulatory Flexibility Analysis

I. **Reason for the Action:**

Channel congestion, interference, low fidelity receivers, and the higher technical quality of newer services have worked to dull AM radio's competitive edge. In particular, current AM broadcast rules do not reflect advances in technological knowledge and applications that could improve the quality of the AM service.

II. **Objective of this Action:**

The goal of the proposed action is to improve the quality of the AM broadcast service and thus, with the participation of AM broadcasters and radio manufacturers, to revitalize its role in broadcast competition.

III. **Legal Basis:**

Authority for the proposals contained in this decision is provided in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

IV. **Number and Type of Small Entities Affected by the Proposed Rule:**

Approximately 5,000 currently operating AM radio stations would potentially benefit from the proposals, in addition to radio manufacturers.

V. **Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:**

One proposal suggested in this document would permit the Commission to issue tax certificates to broadcasters agreeing to reduce interference to cochannel or adjacent channel stations. The proposals, on the whole, should reduce rather than increase reporting and recordkeeping requirements on AM broadcasters and potential AM broadcasters. However, in cases involving directional antennas, we would require an engineering study demonstrating antenna pattern achievement. These studies would be less budensome than those required for stations in the existing band. The proposed reimposition of the AM-FM nonduplication rule could raise operating costs for affected radio stations. Licensees interested in migrating to the expanded band would have to submit non-binding letter of intent with the Commission. The Commission would establish a filing window during which time stations in the existing band could file for authority to move to the expanded band, supporting their request with technical exhibits showing how the applicant should be ranked. But, unlike the current application process, no showing would be required for the proposed new operation; the technical exhibits would address only the applicant's currently licensed station. Finally, offsetting any increase in compliance requirements resulting from our

proposals in this proceeding, the proposed relaxation of the AM multiple ownership rules could allow licensees to own two stations in the same market or community, and share a main studio, thus reducing the stations' administrative costs and workload.

VI. **Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule:**

None.

VII. **Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objective of the Action:**

All of the proposals are intended to benefit AM broadcasters by increasing their ability to compete for listeners through optimal use and recognition of technological advances.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-508

In the Matter of

Improved Methods for Calculating
Skywave Field Strength in the
AM Broadcast Band

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 12, 1990; Released: July 18, 1990

By the Commission:

INTRODUCTION

1. On October 13, 1988, the Commission adopted a *Notice of Proposed Rule Making* (" *Notice* ") in this proceeding, 3 FCC Rcd 6431 (1988), which proposed to adopt a new method of computing skywave signal strength in the AM Broadcast Service. This new skywave model would replace three sets of propagation curves (Figures 1a, 1b and 2 in §73.190) with more accurate equations that take into account the effects of the geomagnetic latitude of the propagation paths. The new model also proposed to use "slant distance" in lieu of the traditional "great circle distance" in making calculations. We also proposed that the new model be based on propagation conditions measured six hours after sunset ("SS+6") rather than two hours after sunset ("SS+2"). Lastly, because the new model yields results for 50% skywave field strength used in determining service contours, we proposed a geomagnetic latitude-based conversion factor for the 10% skywave signals used in predicting interference. With very few exceptions, the comments and reply comments filed in response to the *Notice* strongly supported the new skywave model and its underlying assumptions.[1] We now adopt the model essentially as proposed.

BACKGROUND

2. This proceeding is one of several AM improvement proceedings initiated in response to the MM Docket No. 87-267 *Notice of Inquiry* (" *Inquiry* "), 2 FCC Rcd 5014 (1987), which undertook a comprehensive review of AM broadcast assignment criteria and other technical standards. The *Inquiry* was begun in response to comments filed on the 1986 Mass Media Bureau Report on the Status of the AM Broadcast Rules (RM-5532), which discussed a number of AM broadcast technical, legal and policy issues. Extensive participation in that *Inquiry* and in the Region 2 Administrative Radio Conference by AM broadcasters, their consulting engineers and industry representatives has produced a general consensus about many of the new technical approaches needed for AM improvement, including the so-called "modified method" of calculating skywave field strength that, with minor revisions, is the heart of this proceeding.

3. Two of the skywave propagation curves set forth in the rules were empirically derived from observations of AM band propagation phenomena completed in 1935 (for Figure 1a) and 1944 (for figure 2). However, the Commission has continued to observe AM propagation phenomena in the ensuing decades and has been able to use its experience to develop a more accurate skywave signal prediction model. For example, we have learned that skywave signal strengths are more consistent when observed six hours after sunset rather than two. Also, skywave signal strength is reduced as the geomagnetic latitude of the signal path moves north. We have also learned that using the slant distance for a propagation path, rather than the great-circle path distance results in greater accuracy, particularly when the reception point is close to the transmitter. In short, years of additional observations and measurements have revealed deficiencies in the traditional skywave propagation curves that can no longer be tolerated if AM interference is to be reduced significantly as part of our AM improvement effort.

4. Thus, the *Notice* proposed a new skywave model based on the "modified method." Its use will serve the public interest because it is more accurate than the current propagation curves and because it is easily implemented on computers. Thus, its use will avoid disputes that may arise as a result of graphical interpretation of curve data. The enthusiastic support for the new model that was expressed in the comments and reply comments derives from the fact that the "modified method" has been given careful and widespread engineering scrutiny.

DISCUSSION

General comments on the new skywave model

5. General support for the new model was unanimous. Some commenters did, however, express concerns about unintended or potentially harmful effects that could result from its adoption.

6. For example, several commenters noted that the new model would depict smaller service areas than are now predicted for clear-channel stations in northern latitudes. 3-D Communications Corporation argued that because of the protection afforded to non-existent Class I station skywave service (i.e., the service area predicted to exist using the current propagation curves minus the service area calculated with the new model), Class II stations operating on clear channel frequencies are being deprived of the ability to serve their immediate areas during the heaviest nighttime listening period. The comments of Class II Station WJAG reflect a similar opinion. E. Harold Munn, Jr. & Associates, Inc. and R. Morgan Burrow, Jr. (both professional consulting engineers) indicate that there is no justification for protecting "fictional" (Munn) or "lost area" (Burrow) domestic service when it is actually receiving interference from foreign stations.

7. These opinions are countered by comments of Class I (clear channel) licensees, who argue that current skywave service areas, even if providing weaker signals than was formerly believed, should be protected. The Clear Channel Broadcasting Service ("CCBS") argues that clear channel stations provide the only nighttime service to over one-half the land area of the United States and offer

much needed diversity within the AM band in those areas which have only one or two interference-free groundwave services at night. Thus, the CCBS concludes that during the night, clear channel stations anchor the AM band by making available a service unique to AM. The Jefferson Pilot Broadcasting Co. urges the Commission not to impair nighttime skywave service for modest gains in groundwave service.

8. In another vein, the National Association of Broadcasters ("NAB") and the CCBS request that the Commission adopt a "safety factor" to insure that no new interference result from use of the new skywave propagation model. How this "safety factor" should be determined is left up to the Commission. However, NAB indicates that the safety factor should guarantee that interference does not occur where it is predicted not to occur, and that if there is any statistical error in deriving an empirical formula from raw field strength measurements, the effects of any variances should occur below the threshold of signals causing interference. NAB adds that such a "safety factor" is appropriate in view the standards of good engineering practice.

9. Concern about the protection afforded skywave service of Class I stations is outside the scope of this proceeding. The new model will show that the service area of a northern Class I station may not be as large as formerly thought. It will also show that the interfering contour of a southern cochannel station may extend farther than previously thought. Thus, as a general rule, licensees of southern Class II stations operating on clear channels should not expect use of the new model to permit them to obtain significant increases in their facilities. Conversely, the predicted interfering contour of a northern Class II station may extend less than previously calculated. The relationship between the service and interfering contours of any two cochannel stations will be latitude and path dependent. Therefore, we can make no generalizations about facility increases that may be made possible by use of the new skywave model.

10. Moreover, the new skywave model is only one component used in depicting AM service. In MM Docket No. 88-511, 3 FCC Rcd 6448 (1988), the Commission had under consideration new methods for calculating nighttime protection for stations in the AM service. That docket will shortly be terminated without action under authority delegated to the Chief, Mass Media Bureau. However, we will continue to consider this question in MM Docket No. 87-267. *See Notice of Proposed Rule Making* adopted April 12, 1990. Predicted skywave signal strength is only one of several important factors used in determining the permissibility of proposed facilities. Analysis of its possible effects should also take into account other pending changes in the AM technical standards.

11. We are adopting the new skywave model because it is the most accurate and convenient method of predicting skywave signal strength ever developed. It simply reflects our best estimate of signal strength and coverage. Therefore, we do not agree with the suggestion of NAB and CCBS that it should be modified by some subjectively applied "safety factor." If after considering the net effect of all the technical changes adopted in the AM improvement proceedings we find that the service of Class I stations will be adversely affected, we can determine on a policy (rather than an engineering) basis whether the protected contour for those stations should be changed. But this issue is outside the scope of this proceeding.

12. The majority of commenters agree with our conclusions. Almost all of the commenters, while favoring ultimate use of the new skywave model, opposed its use unless it were part of a comprehensive AM improvement package. The Association for Broadcast and Engineering Standards ("ABES") argued that the implementation of the new model *not* be deferred so that the benefit of the higher degree of predictive accuracy would not be postponed. Karl D. Lahm and Associates ("Lahm") suggested that the new model be implemented in concert with the changes in RSS interference computation under consideration in MM Docket No. 88-511. However, Lahm indicated that it should not be implemented earlier than six months after its adoption in order to give consulting firms time to develop appropriate computer programs.

13. We agree with Lahm and the majority of commenters that implementation of the new model must be deferred at least until the matters at issue in MM Dockets No. 88-511 and 87-267 are resolved. Notwithstanding the merits of the new skywave model, we would not want a few licensees in potentially unique circumstances to be able to take advantage of short-term "loopholes" resulting from the implementation of new technical standards on a piecemeal basis. Such facility proposals, while permissible in the short-term, could require "grandfathering" in the long-term. We believe that implementing the skywave model at this time would only add to our application processing burden while potentially undermining our efforts to improve the AM service. Therefore, we will defer implementation of the new model until other related AM improvement matters have been resolved. At the same time, by adopting the new skywave model in principle at this time, we provide a technical basis for implementation and related technical proposals in the other AM improvement proceedings.

14. Several commenters noted some typographical errors and potential inconsistencies in the new skywave model as it was depicted in Appendix B of the *Notice*. For example, the term (2 Pi + 4.95 $\tan^2$ $Theta_M$) in Equation 1 in Appendix B of the *Notice* should have read (2 Pi + 4.95 $\tan^2$ Phi_M). This was corrected on November 15, 1988, by memorandum included in the docket file. H. R. Anderson and Associates, Inc. ("Anderson") believes the expression [cos $(69+b_M)$] in Equation 3 should be corrected to read [cos $(69-b_M)$].[2]

15. Anderson also questions the constant, 111.18, in Equation 4, arguing that the Handbook of Mathematical Functions by Abramowitz and Stegun (December, 1972) indicates that it should be 111.136. Anderson also notes that using a constant E layer of 100 km is inconsistent with departure angle formulas currently contained in §73.190, Figure 6a, and argues that either a single departure angle should be used for all situations (Anderson's preferred approach) or else the departure angle formula (2) in Appendix B must be corrected. Lahm expresses a similar concern, noting that a single angle is used in analyzing the impact of proposed Canadian and Mexican facilities. Lastly, du Treil, Lundin and Rackley, Inc. suggests that the results of all calculations made using the new skywave formulas be expressed to no more than three significant places so as to recognize natural limitations inherent in the technical data.

16. We appreciate the obviously close scrutiny given the proposed skywave model by the commenters and we concur with the recommendations summarized above. However, as Anderson notes elsewhere in its comments, the

constant 111.18 in Equation 4 is referenced in the 1986 U.S.-Mexican AM Agreement. We note, too, the inconsistency of the new model (which is based on a fixed E-layer height of 100 km and thus by implication a fixed departure angle) with §73.190, Figure 6a (which depicts a range of departure angles based on different E-layer heights). Other commenters noted some of these problems and questioned how the new skywave model would be applied to certain "grandfathered" facilities.

17. The purpose of the *Notice* in this proceeding was simply to obtain general approval for future use of the new skywave model. Thus, Appendix B merely defined the new model without addressing how it would be applied to or used in conjunction with other relevant AM technical standards. Discussion of any minor adjustments to the model proposed in the *Notice* required to make it conform to international treaties and other matters pertaining to its implementation is premature. The action we are taking here is limited to adopting the model on a conceptual basis. We will resolve matters related to the timing and manner of its implementation in the *Notice of Proposed Rule Making* in MM Docket No. 87-267 which is also being adopted on this date. That *Notice* will include a detailed appendix presenting all of the interrelated AM improvement proposals in their proper context for review and comment.

Use of Slant Distance

18. The *Notice* proposed substituting slant distance for the traditional great circle distance in making skywave calculations. Whereas great circle distance is the length of an arc (the curvature of which is based on the earth's radius) between two points on the earth's surface, slant distance includes an additional element which takes into consideration the additional distance required for a signal to reflect off the E-layer while travelling along the arc. For long distances, slant distance and great circle distance converge, but for very short distances they can be very different. Thus, the *Notice* pointed out that the accuracy of calculations would be improved in cases for which the slant distance is large in relation to the great circle distance. It also noted that the Consultative Committee on International Radio ("CCIR") Recommendation 435 recommended the use of slant distance for all propagation paths.

19. All of the parties filing comments addressing this issue agreed that generally substitution of slant distance for great circle distance would improve the accuracy of the calculations. Thus, "slant distance" will be used in conjunction with the implementation of the new skywave propagation model for determining the skywave service of and interference to domestic AM facilities. Predicted interference to and from foreign AM facilities will continue to be determined consistent with applicable treaties until such time as those treaties may be revised.

Reference Hour

20. The skywave model described in Appendix B of the *Notice* was based on skywave propagation data measured roughly six hours after sunset ("SS+6"). These data were considered more appropriate than SS+2 data because phenomena affecting nighttime skywave signal propagation have become stable by that time and skywave propagation conditions are most favorable. Thus, calculation of skywave interference using SS+6 data will produce a worst case result, which is consistent with the use of a conservative interference prediction model. The Commission believes that use of such a model is essential if real reductions in AM skywave interference are to be achieved.

21. Most of the comments filed relating to reference hour supported the use of SS+6. All but one of the rest favored continued use of SS+2 (the current skywave propagation curves are based on SS+2 measurements). However, Robert A. Jones, P.E. ("Jones") suggested that SS+4 data might be a better choice, particularly in the case of the expanded band. Greater Media expressed the belief that SS+6 data would yield a more stable and uniform reference, freer of frequency effects and less sensitive to path direction. However, it noted SS+6 approximates the "graveyard shift" rather than the period of maximum evening radio listening. Greater Media concluded that some stations would be afforded more protection than was necessary using SS+6 but that this was preferable to increased interference levels. The Continental Broadcasting Company agreed that SS+6 better represented the "worst case" for interference calculations. Lahm noted that use of SS+6 would result in better protection of full-time stations' service areas and enhanced prediction of the skywave service of Class I stations. The Hearst Corporation observed that SS+2 appears to be outmoded, having as its genesis old-time family listening habits of 40 years ago.

22. However, the 3-D Communications Corporation ("3-D"), licensee of a Class II station, and Bonneville International Corporation ("Bonneville") expressed the view that SS+2 should be retained as the reference hour. 3-D opposed use of SS+6 because it maximizes protection to the service of Class I stations, according greater importance to Class I skywave service than to Class II station groundwave service. Use of SS+2 would reduce the predicted service areas of Class I stations and afford greater opportunity for Class II stations to increase their facilities. Thus, 3-D argues that at the least, the Commission should adopt a two step procedure whereby a Class II station would protect a Class I station's SS+2 contour until SS+6. It could then reduce power to protect the SS+6 contour. Bonneville argues that SS+2 is more appropriate because all stations' listenership is higher at that time, and because it believes SS+6 is meaningless as a reference point without identifying the season and latitude (*e.g.*, SS+6 in Alaska would be post-sunrise in the summertime).

23. 3-D's support of SS+2 clearly reflects a belief that Class I stations should no longer be protected as extensively as they have been. The protection afforded Class I skywave service is, however, a policy decision that is essentially unrelated to the technical merits of the new skywave propagation model. [3] Therefore, we do not wish to deal with it in this proceeding. It may be true, as Bonneville observes, that listenership levels peak at SS+2. A significant reduction in interference levels in the AM service could lead to increased listenership later in the evening. Because use of SS+2 would result in greater interference levels most of the night, we believe its use would be inconsistent with our desire to improve the quality of AM service. Because SS+6 measurements were obtained during winter months when the night at northern latitudes was very protracted, we find irrelevant the fact that SS+6 is latitude and season dependent. Winter data yield greater skywave coverage areas and concomitantly higher interference levels. Thus, their use reflects a

more conservative approach and would more effectively reduce overall interference levels. Because we believe that every possible means of reducing interference levels in the AM service should be pursued, we believe the public interest would best be served by use of the SS+6 measurement data. Therefore, we decline to modify the model to use SS+2 data instead of SS+6 measurement data.

Conversion factor for 10% skywave field strength

24. The *Notice* also proposed a formula (number eight in Appendix B) for calculating 10% skywave interference levels based upon the new model, noting that the correction factor varies from approximately 6 dB in southern latitudes to roughly 10 dB in northern latitudes.[4] However, the *Notice* described two possible alternatives to this approach. The first would simply be to use the average correction factor (8 dB) nationwide. The other would be to establish three zones based on latitude with different correction factors.

25. The majority of the comments favored using the formula proposed in the *Notice* although many commenters did not give a reason. However, Jones argued that the formula could be safely eliminated, because a standard conversion factor would overprotect all stations and use of an 8 dB correction factor would make the Commission's Rules consistent with those adopted at the 1981 Region 2 Conference. Bonneville likewise expressed the belief that use of an 8 dB correction factor was an acceptable compromise. However, Greater Media supported use of the formula, arguing that only by calculation can the best possible accuracy be obtained and noting that such calculations are readily and inexpensively performed using computers.

26. We disagree with Jones' opinion that a uniform 8 dB value would overprotect all stations. In fact, we find that it would tend to overprotect stations in southern latitudes and underprotect stations in northern latitudes. Thus, we continue to believe that because experience has provided us with the information needed to develop a highly accurate skywave signal strength prediction model, all components (such as the 10% skywave correction factor) of the model should be as accurate as possible. We agree with Greater Media that the effort required to implement the 10% skywave correction formula on computers is negligible and the calculation time minimal. Therefore, we are adopting the 10% skywave correction factor as proposed.

CONCLUSION

27. We conclude that no amendment of the skywave propagation model set forth in Appendix B of the *Notice* is necessary. Therefore, we adopt that model exactly as proposed. However, consistent with the discussion in paragraphs 12 and 13, *supra*, we will not incorporate the model into the rules at this time. Instead, in the MM Docket No. 87-267 AM improvement proceeding, we propose rules that will implement the new skywave model in conjunction with other related changes in the AM technical standards. Thus, interested parties have an opportunity to comment on the final effect of all of our recent AM improvement actions, including any minor refinements of the skywave model that may be necessary to conform it to domestic policy and international agreements. We also find that the purpose of this proceeding has been fulfilled and therefore conclude that it should be terminated.

FINAL REGULATORY FLEXIBILITY ANALYSIS

28. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and Purpose of this Action:

The Commission is replacing the AM skywave propagation curves with a new model based on a data developed over many decades which offer extensive information on skywave propagation characteristics. Use of the new skywave model will enable the Commission to more accurately predict skywave coverage and interference, and will provide us with an important means of potentially improving the quality of the AM service.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis :

No commenters addressed the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

There are no alternatives to the action taken here that would accomplish the stated purpose.

29. The Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.*, (1981)).

PAPERWORK REDUCTION ACT STATEMENT

30. While a new skywave propagation model is being adopted in this action, its effective date is being deferred. Therefore, no rule changes are being implemented at this time, so no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements subject to the Paperwork Reduction Act of 1980 will result at this time. Neither will the burden hours placed upon the public be increased or decreased. We believe that implementation of the new skywave model will have little, if any impact on the Paperwork Reduction Act concerns listed above, except that the burden hours placed upon the public may be decreased through automation of skywave signal calculations on inexpensive and widely available computers.

ORDERING CLAUSES

31. Accordingly, IT IS ORDERED That pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, the skywave signal strength prediction model described by the formulas contained in Appendix A below IS ADOPTED. However, its implementation will be deferred pending action on related AM improvement proceedings.

32. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Comments

3-D Communications Corporation
Association for Broadcast Engineering Standards, Inc.
Bonneville International Corporation
CBS, Inc.
Capital Cities/ABC, Inc.
Clear Channel Broadcasting Service
Continental Broadcasting
Cox Enterprises, Inc.
du Treil, Lundin & Rackley, Inc.
E. Harold Munn Jr., & Associates, Inc.
Empire Radio Partners, Ltd.
Greater Media, Inc.
H & C Communications, Inc.
H. R. Anderson & Associates, Inc.
Hearst Corporation
Karl D. Lahm & Associates
National Association of Broadcasters
Outlet Broadcasting, Inc.
Robert A. Jones, P.E.
Timothy C. Cutforth, P.E.

Reply Comments

Clear Channel Broadcasting Service
Eric Chandler Communications of San Diego, Inc.
Ex Parte Comments filed by R. Morgan Burrow, Jr., P.E.
Fisher Broadcasting, Inc.
Jefferson Pilot Broadcasting Company
Nolte Communications, Inc.

MM Docket No. 88-508

APPENDIX B – CALCULATION OF SKYWAVE FIELD STRENGTH

The following formulas are to be used in place of the curves in Section 73.190 of the FCC Rules. The methods used to determine other factors such as radiation value, elevation angle, and f(θ) are unchanged and can be determined by referring to the appropriate section of the FCC Rules.

1. Skywave field strength, 50% of the time (at SS+6):

The skywave field strength, $F_c(50)$, for a characteristic field strength of 100 mV/m at 1 km is given by:

$$F_c(50) = (97.5 - 20\log D) - (2\pi + 4.95\tan^2\phi_M)\sqrt{(D/1000)} \ \text{dB}(\mu\text{V/m}) \quad (1)$$

The slant distance, D, is given by:

$$D = \sqrt{40,000 + d^2} \ \text{km} \quad (2)$$

The geomagnetic latitude of the midpoint of the path, ϕ_M, is given by:

$$\phi_M = \arcsin[\sin a_M \sin 78.5° + \cos a_M \cos 78.5° \cos(69 + b_M)] \ \text{degrees} \quad (3)$$

The short great-circle path distance, d, is given by:

$$d = 111.18d° \ \text{km} \quad (4)$$

Where:

$$d° = \arccos[\sin a_T \sin a_R + \cos a_T \cos a_R \cos(b_R - b_T)] \ \text{degrees} \quad (5)$$

Where:
a_T is the geographic latitude of the transmitting terminal (degrees)
a_R is the geographic latitude of the receiving terminal (degrees)
b_T is the geographic longitude of the transmitting terminal (degrees)
b_R is the geographic longitude of the receiving terminal (degrees)
a_M is the geographic latitude of the midpoint of the great-circle path and is given by:

$$a_M = 90 - \arccos\left[\sin a_R \cos\left(\frac{d°}{2}\right) + \cos a_R \sin\left(\frac{d°}{2}\right)\left\{\frac{\sin a_T - \sin a_R \cos d°}{\cos a_R \sin d°}\right\}\right] \ \text{degrees} \quad (6)$$

b_M is the geographic longitude of the midpoint of the great-circle path and is given by:

$$b_M = b_R + k\left[\arccos\left(\frac{\cos\left(\frac{d°}{2}\right) - \sin a_R \sin a_M}{\cos a_R \cos a_M}\right)\right] \ \text{degrees} \quad (7)$$

Note(1): If $|\phi_M|$ is greater than 60 degrees, equation (1) is evaluated for $|\phi_M| = 60$ degrees.
Note(2): North and east are considered positive; south and west negative.
Note(3): In equation (7), $k = -1$ if $b_R > b_T$, otherwise $k = 1$.

2. Skywave field strength, 10% of the time (at SS+6):

The skywave field strength, $F_c(10)$, is given by:

$$F_c(10) = F_c(50) + \Delta \ \text{dB}(\mu\text{V/m}) \quad (8)$$

Where:
$\Delta = 6$ when $|\phi_M| < 40$
$\Delta = 0.2|\phi_M| - 2$ when $40 \leq |\phi_M| \leq 60$
$\Delta = 10$ when $|\phi_M| > 60$

For the complete text of this revised CFR Section, See the Notice of Proposed Rule Making in MM Docket No. 87-267, FCC 90-136 at 55 FR

FOOTNOTES

[1] A list of parties filing comments and reply comments is given in Appendix A. A skywave signal is that portion of a station's transmitted signal that is reflected by the ionosphere back to the earth. The strength of the reflected signal is generally negligible during the day and increases gradually after sunset.

[2] However, we have verified that Equation 3 as depicted in Appendix B is correct. The negative term sought by Anderson would appear to follow from the convention indicated in Note 2, which states that western longitudes should be considered negative.

[3] *See* ¶¶ 10-12, *supra*.

[4] The correction factor is used to derive the 10% skywave interfering signal strength (or contour) from the 50% skywave service signal strength (or contour). The Commission traditionally uses 50% reliability signals or contours to define service and 10% reliability signals or contours to define interference.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-510

In the Matter of

Improved Methods for Calculating
Groundwave Field Strength in the
AM Broadcast Band

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 12, 1990; Released: July 18, 1990

By the Commission:

INTRODUCTION

1. The Commission has decided to replace its current AM broadcast band groundwave propagation curves with a new set of curves. Over a significant range of distances, the current curves are a result of "curve fitting" that estimated values between the curve segments that could be calculated. A 1986 computer program allowed mathematical calculation of predicted groundwave field strengths at all distances. The new curves are derived from data generated by that computer program. While the new curves are more accurate than the old curves, we will not make the change effective until related changes in technical assignment criteria are adopted.

BACKGROUND

2. The *Notice of Proposed Rule Making* (" *Notice* ") proposed replacing the existing AM groundwave propagation curves with a new, more accurate set of curves for depicting groundwave service and interference.[1] In addition, the *Notice* raised the matter of improving the FCC ground conductivity map, Figure M3, but proposed no revision because adequate funds were not available to pursue this extensive project. The "Kirke method," which is the procedure currently specified in our rules for calculating groundwave field strength over paths containing more than one ground conductivity value, was also discussed. Finally, we requested comments on whether the proposed changes should be implemented in a "piece meal" fashion or coordinated with action in related proceedings to change other AM technical assignment criteria.

3. To put this proceeding in context, it is one of several that are outgrowths of the MM Docket No. 87-267 *Notice of Inquiry* (" *Inquiry* ").[2] The *Inquiry* is the Commission's comprehensive review of AM broadcast assignment criteria and other technical standards. It followed comments filed on a 1986 Mass Media Bureau Report on the Status of the AM Broadcast Rules (RM-5532). Through the *Inquiry* and the Region 2 Administrative Radio Conference, the AM broadcast industry has reached general agreement on many of the new technical approaches needed for AM improvement, including the revised groundwave propagation curves considered in this proceeding.

COMMENT SUMMARY

4. Ten parties filed comments and five parties filed reply comments. [3] There is unanimous support in the comments for adopting the proposed new groundwave propagation curves. Several commenters request that the Commission continue allowing field strength measurements to be made in lieu of the calculations using the curves. Three parties make suggestions regarding the physical characteristics of the graphs on which the curves are plotted.[4]

5. Comments vary on the importance of improving the Figure M3 ground conductivity map. NAB argues that it is less important than adopting the new curves. Cox urges the Commission to proceed cautiously, starting with thorough data collection. WGN, CBS and especially ABES and Nolte indicate that revision of Figure M3 is a significant task that merits immediate, high-priority Commission attention. ABES suggests that when we adopt new curves, we should keep this Docket open to expedite Figure M3 revision. Nolte suggests that the Commission require conductivity information to be submitted in applications in order to begin building a data base for Figure M3 revision.

6. Generally, retaining the "Kirke method" was supported by the comments that addressed it. Lahm suggests that when resources are available, the Commission should conduct a study to find an improved methodology.

7. The consensus of comments favored coordinated implementation with the other related AM improvement proceedings. Those supporting this approach included WGN, Clear, Empire, Cox, du Treil, NAB, Fisher, Outlet, and Pilot. NAB also suggested that we need to revise the first adjacent channel protection ratio at the same time as the current proposals are implemented. Outlet contends that implementation should occur only after international agreements are ratified. A few commenters did not agree. ABES takes the position that groundwave changes don't need to wait for resolution of skywave issues. Lahm suggests limited interim uses of the new curves, but urges the Commission to allow six months before use of the new curves is required. A few other miscellaneous implementation matters were raised in comments.[5]

DISCUSSION

8. In light of the comments, we are adopting the proposed change in the groundwave propagation curves. We find that the new curves more accurately reflect groundwave signal coverage than the existing curves and should lead to better prediction of when objectionable interference does or does not exist.

9. We also considered the suggested changes in the horizontal and vertical scales, but conclude that the current format offers the best compromise between ease of distinguishing values and range of values included. As proposed, we are also amending the language in §73.184 pertaining to Figure 20 to refer to metric units. In addition, we were surprised by the concern expressed in some comments that the proposal may have prohibited field

strength measurements in lieu of calculations. We did not intend to alter that provision of §73.183 and it is not being changed.

10. We continue to believe that updating Figure M3 is a beneficial project that we should pursue. However, current funding and staffing levels do not allow it at this time and we find no benefit to keeping this proceeding open until Figure M3 revision can be undertaken. Such revision will undoubtably require additional notice and comment before changes can be adopted. We will act on this matter in a future Rule Making proceeding.

11. As we pointed out in the *Notice*, the Commission's rules currently specify a procedure for calculating groundwave field strengths over paths containing more than one ground conductivity value. This procedure is referred to as the equivalent distance method or "Kirke method." The information submitted in comments did not convince us that there is likely to be an alternative that is appreciably more accurate. Therefore, we believe our resources are better spent in other areas and we do not intend to pursue further at this time the possibility of using an alternative method.

12. We do not agree with the suggestion of NAB that the new groundwave model should be modified by some subjectively applied "safety factor." The model is being adopted because it is the most accurate method of predicting groundwave field strength available. If, after considering the net effect of all the technical changes proposed in the AM improvement proceedings, we discover that some stations will be adversely affected, arguments can then be made on a policy (rather than an engineering) basis that the protection standards should be altered.

13. The implementation date for the new curves will be established in the AM improvement proceeding in which we consider related assignment criteria. We find that Lahm's recommendation for limited uses in the interim would create administrative confusion. Canadian and Mexican negotiations and du Triel's 3-digit accuracy proposals are more appropriately considered in the assignment criteria Rule Making. All we adopt today is a propagation model with improved accuracy over the current model. The implementation details associated with the model's use, along with protection standards and other related matters, will be considered in conjunction with the *Notice of Proposed Rule Making* adopted today in the AM improvement proceeding, MM Docket No. 87-267.

14. Currently, Section 73.184 does not contain the actual groundwave propagation curves, but is instead followed by a note that these graphs are available by contacting the Commission. Thus, adopting new curves does not require Section 73.184 or the following note to be changed. Instead, we will prepare and make available sets of the new curves in the near future. Until implementation, the new curves will be labeled "Curves adopted April, 1990 are not in effect pending further action of the FCC." We fully expect that they will be available in this form for at least six months before they become effective, as Lahm requests. The individual data points which define field strength at various distances and which form the basis of the curves also will be made available.

CONCLUSION

15. After consideration of the record developed in this proceeding, we conclude that adoption of the proposed changes is in the public interest. The new groundwave model produces more accurate field strength predictions, allowing more confidence in service and interference determinations. Consistent with the discussion in paragraphs 13 and 14, *supra*, the model will not become effective at this time. In the AM improvement proceeding, MM Docket No. 87-267, we propose additional rules to integrate the new groundwave model with related AM technical and assignment standards. Thus, parties to this proceeding have an opportunity to comment on the final intended effect of all of our recent AM improvement actions, including any implementation refinements of the groundwave model.

FINAL REGULATORY FLEXIBILITY ANALYSIS

16. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and Purpose of this Action:

The Commission is replacing the AM groundwave propagation curves with a new model based on recent scientific analysis of groundwave measurement data and theory. Use of the new method will provide a more accurate depiction of service and interference relationships between AM broadcast stations.

II. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis:

No commenters addressed the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered and Rejected:

There are no alternatives to the action taken here that would accomplish the stated purpose.

17. The Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.*, (1981)).

PAPERWORK REDUCTION ACT STATEMENT

18. The rule changes adopted here have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease the burden hours on the public.

ORDERING CLAUSES

19. Accordingly, IT IS ORDERED That pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, the groundwave field strength prediction model described by the Graphs 1 to 19, and 20 that are available pursuant to the note following §73.184(f) IS ADOPTED. The effective date of this change will be established by further Commission action in related AM improvement proceedings. For the complete text of this revised CFR Section, *See* the

Notice of Proposed Rule Making in MM Docket 87-267, FCC 90-136 at 55 FR _____. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *See Notice of Proposed Rule Making* in MM Docket 88-510, 3 FCC Rcd 6577 (1988).

[2] *See Notice of Inquiry* in MM Docket 87-267, 2 FCC Rcd 5014 (1987).

[3] Comments were filed by Robert A. Jones, P.E. (Jones), WGN Continental Broadcasting Company (WGN), Clear Channel Broadcasting Service (Clear), Empire Radio Partners, Ltd. (Empire), CBS, Inc. (CBS), Association for Broadcast Engineering Standards, Inc. (ABES), Cox Enterprises, Inc. (Cox), National Association of Broadcasters (NAB), du Treil, Lundin & Rackley, Inc. (du Treil), and Karl D. Lahm, P.E. (Lahm). Reply comments were filed by Fisher Broadcasting, Inc. (Fisher), Jefferson Pilot Broadcasting Company (Pilot), Nolte Communications, Inc. (Nolte), and Clear. In addition, the submission of Outlet Broadcasting, Inc. (Outlet) was labelled comments, but clearly was intended to be reply comments, and will be treated as such.

[4] Lahm suggests changing the horizontal scale to range from 0.5 to 50 kilometers (km) for the upper curves and from 50 to 5000 km for the lower curves, claiming this would eliminate the hard to read, seldom used 0.1 to 0.5 km section and expand the remaining portion, making the curves easier to use. He also proposes using graph paper with a less dense grid structure to facilitate curve reading and data plotting. Nolte opposes Lahm's suggestions and instead offers that the vertical scale should be extended at least to 2000 mV/m because measurement data of some high power stations plot off the current scale. Nolte also suggests that the curves be reprinted in two contrasting shades of black. Jones wants the existing scales to be retained so that NAB printed graph paper can still be used.

[5] Lahm requests that the Commission generate and make available new data tables that are compatible with its GWAVE computer program. He also suggests that we urge Canada and Mexico to adopt the new curves and supports the conversion of Graph 20 of §73.184 to metric as was suggested in the *Notice*. Du Treil supports making Graph 20 metric and also suggests a requirement that all calculations be expressed to no more than three significant digits. NAB suggests the use of a "safety factor" when implementing new curves. Nolte agrees with du Treil on 3 digit accuracy, but disagrees with NAB on a safety factor. Nolte argues that the new prediction method must improve accuracy or it isn't useful, and that a safety factor would make the prediction less accurate. Finally, Outlet suggests that the computer program for predictions would be most useful if it is compatible with personal computers.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-46

In the Matter of
Policies to Encourage
Interference Reduction Between
AM Broadcast Stations

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 12, 1990; Released: July 18, 1990

By the Commission:

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding, 4 FCC Rcd 2430 (1989). That *Notice* looked toward the development of formal procedures for AM licensees to reduce interstation interference through agreements among stations, and considered related changes in our AM processing rules that may facilitate such procedures. In the *Notice*, we requested comment concerning the existing policy of "grandfathering" deleted AM facilities, the Commission rule of proscribing contingent applications, the requirement that a major change in AM facilities be subject to competing applications, and the establishment of a "local service floor." Thirteen parties filed comments and/or reply comments.[1] After careful consideration and review of these comments, we are adopting the proposals presented in the *Notice*.

BACKGROUND

2. The *Notice* in this proceeding is an outgrowth of both the Mass Media Bureau's *Report on the Status of the AM Broadcast Rules*, released April 3, 1986, and the subsequent *Notice of Inquiry*, 2 FCC Rcd 5014 (1987), addressing the technical, legal, and policy issues pertaining to AM broadcasting.[2] In response to the *Notice of Inquiry*, commenters have emphasized the need to improve the overall quality of the AM service. In order to address these concerns, we have initiated four different dockets. [3] Today we are adopting a *Notice of Proposed Rule Making* in MM Docket No. 87-267, through which we intend to refine and integrate the proposals made in these earlier dockets into a master plan for achieving a significantly improved AM broadcast service. As an integral part of that master plan, we now remove regulatory barriers that prevent or discourage individual AM stations from lessening the amount of interstation interference and improving the quality of service through private agreements. The result of these negotiations between AM stations may be the filing of contingent applications as discussed in paragraphs 5, 6, 7 and 8, *infra*, or one station's deleting or modifying its facilities. In order to provide this opportunity, it is necessary to make certain changes in our AM rules and procedures.[4] After providing background information, we discuss these changes below.

3. In order to put these proposals into perspective, it is necessary to discuss current AM assignment criteria, which are based on the concept of protected contours.[5] Under our Rules, AM proposals are examined to determine whether a proscribed interfering contour would overlap the protected service contour of the existing station. The propagation characteristics of the AM signal differ during daytime and nighttime hours. During daytime hours, the extent of the service and interfering contours can be calculated on the basis of frequency, power, and ground conductivity. These contours are referred to as groundwave contours. Sections 73.37(a) and (b) of the Rules set forth the permitted overlap of groundwave contours between protected and interfering stations. Due to ionospheric reflection of AM signals during nighttime hours, AM signals propagate over significantly greater distances at night than during daytime hours. The contour of such nighttime signals is referred to as the skywave contour. In regard to AM nighttime interference criteria, Section 73.182 of the Rules sets forth interference protection criteria based on groundwave and skywave contour protection as well as the class of the protected AM station.

4. The comments we received were unanimous concerning the need to improve the technical quality of the AM service. We received several relevant comments pertaining to the present AM assignment scheme. Both the Association for Broadcasting Engineering Standards ("ABES") and Radio WADO, Inc., referred to our 1964 action in Docket No. 15084 establishing Section 73.37 of the Rules, commonly referred to as the "go-no-go" rules. *AM Station Assignment Standards*, 45 FCC 1515 (1964). The expression "go-no-go" refers to the decision to evaluate proposals on the basis of prohibited contour overlap rather than a subjective weighing of audience gains and losses. In that action we noted the increase in the percentage of AM stations causing or receiving objectionable interference within a prescribed service area during the years 1952 to 1962. Specifically, we stated the following:

> The number of new stations causing more than 1% of 'objectionable interference' rose from 2% in 1952 to 21% in 1962. The percentage receiving more than 1% rose from 18% to 36% in the same period. A further study of 60 consecutive "pre-freeze" applications for new stations granted from April 1962, to April 1963, showed that 42% either caused or received some degree of "objectionable interference."

AM Station Assignment Standards, *supra* at 1522. Radio WADO, Inc. made two additional observations. First, Radio WADO observes that the "go-no-go" rules did not end the creation of objectionable AM interference because Section 73.37(b) of the Rules permits interference received under certain situations, and propagation conditions, in some situations, lead to stronger signals and therefore more interference than was predicted. Radio WADO also notes that the "go-no-go" rules did nothing to reduce existing interference in the AM band. The ABES makes a similar observation, noting that in 1964, approximately 4,000 AM stations were in existence, and a significant proportion of these stations were causing or receiving objectionable interference. Of the approximately

974 stations authorized since 1964, ABES correctly notes that many of these were "shoehorned in" with interfering contours closely approaching the protected contours of existing stations.

" GRANDFATHERING " DELETED AM STATIONS

5. When an AM station is deleted, we have, as a matter of policy, maintained the radiofrequency radiation rights for a period of one year for parties wishing to file an application to replace the deleted facility.[6] In many cases, however, this policy leads to the perpetuation of AM stations' causing or receiving objectionable interference. We concur with Group W that our present policy of maintaining these deleted AM facilities is actually a disincentive to bringing these stations into compliance with current AM assignment standards. Parties filing comments supported our proposal to require applicants for such deleted facilities to comply with the technical requirements in effect at the time that they file their applications. Therefore, we are adopting this new policy that new applicants must meet current technical standards.

CONTINGENT APPLICATIONS

6. Section 73.3517 of the Rules prohibits the acceptance of contingent applications for construction permits proposing either new or modified facilities.[7] Currently, parties cannot file such applications even though the applications might lead to the improvement in one station's facilities made possible by changes to the facilities of the other station, and a concomitant overall reduction in AM interference. We continue to believe that, as a general matter, accepting such speculative applications contingent on the grant of another application imposes an unwarranted burden on our administrative resources. However, the *Notice* proposed permitting contingent applications leading to an overall reduction in AM interference. For example, one station may conclude an agreement with a nearby station on an adjacent channel whereby the second station reduces its daytime and nighttime power. This would reduce interference caused to the first (and other) stations and could allow the first station to improve its daytime facilities. This proposal envisions two or more applications being filed and granted simultaneously. The comments that we received supported this proposal.

7. We agree with the National Association of Broadcasters ("NAB") that there is a need for a full public interest evaluation of such proposals and while we do not foresee any particular types of abuse, we will be alert for such problems. On the other hand, we disagree with the NAB that such contingent applications should be limited to situations in which one station actually terminates operation, thereby affording "finality" to the process. In addition to terminating operation, AM stations may significantly reduce interference by reducing power, terminating nighttime operation or using a directional antenna. We believe that giving AM stations this additional option for reducing interference is consistent with our goal of improving the quality of the AM radio service. The amended contingent application rule will apply to both deletions and modifications of existing AM stations.[8] We believe that "finality" will be achieved by the fact that any subsequent application by the modified station, or a party filing for a deleted facility, will have to comply with the technical rules then in effect.

8. We are amending Section 73.3517 of the Rules to permit contingent applications that would assure a reduction in overall AM interference.[9] This amendment should provide two incentives for stations to enter into such agreements. Both of these incentives will benefit the station making the payment to the other station. First, as discussed in paragraph 10, *infra*, we are protecting the station improving its facilities from competing applications. This protection will be afforded to both major change applications such as an increase in power, and also to minor changes such as modifying a directional antenna pattern. The second incentive for contingent application arrangements concerns the calculation of the RSS limit.[10] During nighttime hours, an existing station is protected from its transmitter to its RSS contour. The effect of reducing interference toward a station would be to reduce the RSS limit at the old RSS contour, thereby expanding that station's protected service area. As indicated in paragraph 38 of the *Notice*, recalculation of the RSS occurs upon deletion or modification of an AM station contributing to the RSS limit.[11] Termination or modification of an AM station's facilities may also reduce the RSS limit of an AM station not a party to the contingent application arrangement. In turn, this reduction in the latter's RSS limit may preclude a station that is party to the arrangement from improving its nighttime operation even if it were willing to pay other stations to allow it to do so. To remedy this potential problem, all associated contingent applications will be granted simultaneously. This will require a station seeking an improvement in nighttime operation to protect only existing RSS contours of all stations not a party to the contingent application arrangement.

COMPETING APPLICATIONS

9. The contingent application procedure discussed above assumes that one station will either delete or modify its facilities in order to permit the other station to improve its area of signal coverage or service quality. This improvement might be achieved through a major or a minor facilities change.[12] Under our current application processing procedures, applications for either type of change are subject to competing applications.[13] A competing application, or the possibility of a competing application, might discourage parties from initiating such proposals due to the costs of a comparative hearing, or the risk that a competing applicant may prevail in a comparative proceeding. These factors could discourage proposals that would lead to a reduction in AM interference.

10. To reduce this deterrent substantially, the *Notice* proposed that any competing application would have to protect the licensed facilities of the stations participating in the contingent application arrangement even though there might be no conflict with any licensed facility after the arrangement is implemented. In addition, the competing application would be subject to the applicable cut-off date. The commenters all supported this proposal. We are amending Section 73.3571 of the Rules to codify this proposal. We find such action to be in the public interest because it removes a potentially significant deterrent to our efforts to improve the quality of the AM service. It is

clearly within our authority to promulgate rules limiting eligibility to submit a competing application when we determine that such action promotes a specific public interest objective. *U. S. v. Storer Broadcasting Company*, 351 U.S. 192 (1956). Such action, accordingly, does not violate the holding in *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), which prohibits us from granting one of two mutually exclusive applications for an available frequency filed by two eligible applicants without comparatively considering the two applications. In connection with this, we note that under our amended procedure, the currently licensed facilities of any party to a contingent application arrangement would preclude consideration of any competing application proposal. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4873 (1989), *recon. pending*.

LOCAL SERVICE FLOOR

11. We emphasize that a significant factor underlying our decision to grant or deny a contingent application arrangement involving deletion or reduction in AM facilities would be whether it satisfies the public interest requirement of a local service floor - a level of broadcast service that must be maintained subsequent to any deletion or reduction in AM facilities. The comments concurred that there was a need to require a minimum level of service. After careful consideration of the comments, we agree with the NAB that we cannot establish a quantifiable service floor that can be uniformly applied with respect to the replacement of deleted facilities or our public interest evaluation of contingent application arrangements. Instead, we will consider the issue of a local service floor on a case-by-case basis. However, the comments were helpful to our efforts to identify some guidelines that could be of value in regard to a local service floor.

12. At the outset, we agree with Great American Television and Radio Company, Inc., ABES and Karl D. Lahm that, consistent with longstanding precedent, we should consider the availability of both AM and FM service in determining whether an area affected by a deletion or a contingent application arrangement has sufficient service, since AM and FM are part of a single aural service. *Anamosa and Iowa City, Iowa*, 60 FCC 2d 1041 (1976). Also, like du Treil. Lundin, and Rackley, Inc., we do not envision our being able to make the public interest finding necessary for the grant of a contingent application arrangement or deletion request if the proposal would create "white" or "gray" areas.[14] In most cases, our public interest evaluation will weigh the amount of AM interference that will be eliminated against the number of AM and FM services remaining available to the areas that will lose service. Our evaluation will also take into account the areas and populations that will gain service as a result of the proposal and the availability of other services to these areas.

13. Both the decision to eliminate the grandfathering of deleted AM facilities and the possibility of contingent application arrangements that would delete such a facility trigger our concern for a community possibly losing its only broadcast service. We do not, however, believe that we must establish an exception to our new policy of not grandfathering deleted AM facilities if the deleted station happens to be a community's only local service. We reach this conclusion for two reasons. First, in regard to stations close to metropolitan areas, the community losing the facility could very well be receiving primary and city grade service from many other stations. We believe that the availability of two or more primary services coupled with a reduction in AM interference would justify our not permitting a party to restore a deleted AM station that would not comply with current technical requirements. We would also use this guideline in evaluating a contingent application arrangement proposing deletion of a community's only local aural service. Second, in regard to the deletion of an AM station in a more remote area, we believe another AM station could restore local service, albeit with less powerful or directional facilities, and comply with our technical requirements. We believe it extremely unlikely that, in an area where there is no primary or city grade service, lack of available spectrum is the cause. It is far more likely the case that economic factors make it impossible to profitably operate a station. In such situations, there would moreover generally be adequate AM or FM spectrum available for a local aural service at a later date, if demand warrants.

CONCLUSION

14. We continue to believe that it is in the public interest to encourage interstation agreements proposing a reduction in AM interference and to provide a procedural framework that would facilitate such agreements. Based on our consideration of the record in this proceeding and for the reasons set forth above, we conclude that it is appropriate to terminate the current policy of grandfathering deleted AM facilities, to permit contingent applications that result in overall interference reduction, to require that competing applications filed against such contingent applications protect the licensed facilities of those stations participating in the contingent application arrangement, not to establish a specific local service floor that would be applicable to all situations, and to amend Sections 73.1750, 73.3517, and 73.3571 of the Rules as set forth in the attached Appendix B.

FINAL REGULATORY FLEXIBILITY ANALYSIS

15. Pursuant to Regulatory Flexibility Act of 1980, our final analysis is as follows:

I. Need for and Purpose of the Rule

We have concluded that current rules and policies are an unnecessary deterrent to improving the technical quality of the AM band and agreements between AM stations looking toward a reduction in AM interference.

II. Flexibility Issues Raised in the Comments

No regulatory flexibility issues were raised in the comments.

III. Significant Alternatives Considered but Not Adopted

The alternative would be to make no change in current rules and policies. This would not achieve the public interest benefit of facilitating reductions in AM interference.

PAPERWORK REDUCTION ACT STATEMENT

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, That the amendments to Part 73 of the Commission's Rules and Regulations set forth in Appendix B below ARE ADOPTED. The effective date of these amendments will be established by further Commission action in MM Docket No. 87-267.

18. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

19. Authority for the action taken herein is contained in Sections 4(i) and (j), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), (j), 303(r).

20. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

The following parties submitted comments and or reply comments:

Association for Broadcast Engineering Standards, Inc.

Glenn F. Bircher

Capital Cities/ABC, Inc.

CBS, Inc.

Corporation for Public Broadcasting

du Treil, Lundin & Rackley, Inc.

Great American Television and Radio Company, Inc.

Karl D. Lahm, P.E.

The KICD Stations

Harold Munn Jr. & Associates, Inc.

National Association of Broadcasters

Radio WADO, Inc.

Westinghouse Broadcasting Company, Inc.

APPENDIX B

Part 73 of Title 47 of the CFR is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.1750 is amended to add the following language at the end to read as follows:

§ 73.1750 Discontinuance of operation

***If a licensee surrenders its license pursuant to an interference reduction arrangement, and its surrender is contingent upon the grant of another application, the licensee surrendering the license must identify in its notification the contingencies involved.

3. Section 73.3517 is amended by adding new paragraph (c) to read as follows:

§ 73.3517 Contingent applications

* * * * *

(c) Upon payment of the filing fees prescribed in §1.1111 of this chapter, the Commission will accept two or more applications filed by existing AM licensees for modification of facilities that are contingent upon granting of both, if granting such contingent applications will reduce interference to one or more AM stations or will otherwise increase the area of interference-free service. The applications must state that they are filed pursuant to an interference reduction arrangement and must cross-reference all other contingent applications.

4. Section 73.3571 is amended by adding new paragraph (c)(1) to read as follows:

§ 73.3571 Processing of AM broadcast station applications

* * * * *

(c) * * *

(1) In order to grant a major or minor change application made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon a finding that such action will promote the public interest, convenience and necessity.

* * * * *

FOOTNOTES

[1] A list of those parties is contained in Appendix A.

[2] The 107 AM channels are divided into three groups of channels: clear channels, regional channels and local channels. Four basic classes of stations evolved to operate on these three channel groups. Class I and Class II stations operate on clear channels. Class I stations provide extensive primary

(groundwave) service during the day and night, with skywave service during nighttime hours generally extending out to 750 miles or more from the transmitter. Class II stations protect the Class I station on the channel and provide primary service only, the area of which depends upon station location, power and frequency. Class III stations represent an intermediate category and operate on regional channels, providing service to larger cities and the surrounding rural areas. Class IV stations operate on local channels and provide primary service to a community and the immediately contiguous surburban or rural areas. *See* 47 C.F.R. §§73.21-37, 73.182. Shortly, there will be ten additional AM channels in the expanded AM band between 1605 and 1705 kHz. Rules governing these stations are being considered in a companion item in MM Docket No. 87-267.

[3] *See Improved Methods for Calculating Skywave Field Strength in the AM Broadcast Band*, MM Docket No. 88-508, 3 FCC Rcd 6431 (1988); *Enhanced Nighttime Operation for Class II - S and III - S AM Radio Broadcast Stations*, MM Docket No. 88-509, 3 FCC Rcd 6444 (1988); *Improved Methods for Calculating Groundwave Field Strength in the AM Broadcast Band*, MM Docket No. 88-510, 3 FCC Rcd 6577 (1988); *Review of the Methods for Calculating Nighttime Protection for Stations in the AM Broadcast Service*, MM Docket No. 88-511, 3 FCC Rcd 6448 (1988).

[4] Group W and duTreil, Lundin & Rackley, Inc. have suggested the issuance of tax certificates pursuant to Section 1071(a) of the Internal Revenue Code, 28 U.S.C. §1071(a), as an additional means of encouraging reductions in AM interference. The use of tax incentives was not proposed in the *Notice*, and is therefore outside the scope of this proceeding. In the *Notice of Proposed Rule Making* we adopt today in MM Docket No. 87-267, however, we propose the use of Section 1071(a) tax certificates in connection with stations turning in their licenses as part of a voluntary agreement to reduce interference, and request comment on the use of tax certificates when stations reduce interference as part of a voluntary agreement.

[5] Objectionable interference to particular service contours is defined in Sections 73.37 and 73.182 of the Commission's Rules.

[6] The one year period commences upon release of a *Public Notice* announcing the deletion of the facility. Parties may file applications for the deleted facility after release of the *Public Notice*.

[7] Section 73.3517 of the Rules does permit a modification application by a proposed assignee or transferee in connection with an assignment or transfer application.

[8] We emphasize that after deletion of an AM station, a third party may file an application, in accordance with current AM technical requirements, proposing, in substantial part, reestablishment of the deleted AM station.

[9] The NAB has suggested a waiver approach to contingent applications based on AM interference reduction. In view of the benefits that would flow from such applications, we believe that a general rule would better serve the public interest. A rule gives certainty and would be preferred over an *ad hoc* case by case approach, especially where a processing rule is involved.

[10] The RSS limit is derived by calculating the effect of skywave interference from other nighttime AM stations on the potential service area of the AM station. *See* Section 73.182 of the Rules. In a separate action today in MM Docket No. 87-267, the Commission is proposing that the RSS method for calculating interference be replaced by a single signal method.

[11] This recalculation will occur upon either release of a *Public Notice* announcing the deletion of the AM station, or, in the case of modified facilities of a station contributing to another station's RSS limit, upon licensing of those modified facilities.

[12] It is also conceivable that a station could benefit by having its RSS limit decreased, which would not require the filing of an application.

[13] Section 73.3571(c) of the Rules provides for a cut-off list for major change applications. For minor change applications, we will consider any mutually exclusive application filed prior to acceptance and grant of the earlier-filed minor change application.

[14] A "white" area is an area that receives no full-time aural service. A "gray" area receives one full-time aural service.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of the Application of

HUGHES COMMUNICATIONS GALAXY, INC. File No. 13-DSS-ML-90

Request for Interim Assignment of the Galaxy VI Satellite to the 99° W.L. Orbit Location

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 1990; Released: July 16, 1990

By the Chief, Common Carrier Bureau:

I. BACKGROUND

1. Hughes Communications Galaxy, Inc. (Hughes) has requested authority to locate its Galaxy VI satellite at 99° W.L. on a temporary basis. American Satellite Company (Contel ASC), GE American Communications, Inc. (GE American) and National Public Radio (NPR) have filed comments to which Hughes has replied. For reasons discussed below, Hughes's request is granted.

2. Hughes is the licensee of the Westar IV satellite which is currently located at 99° W.L. and operates in the 4/6 GHz frequency bands. Westar IV is scheduled to reach its end of service life in late 1991 and Hughes has authorization to replace it with another 4/6 GHz satellite. Hughes also has authorization to construct, launch and operate a 12/14 GHz satellite at 99° W.L. Recently, Hughes has been granted authority to modify these authorizations to construct, launch and operate a single hybrid satellite from the 99° W.L. orbit location.[1]

3. Because its proposed hybrid, Galaxy IV(H), will not be ready to launch until 1993, and because Westar IV is scheduled for retirement at the end of 1991, Hughes states that it needs to provide interim service to Westar IV's customers from the 99° W.L. location. Galaxy VI is scheduled for launch in June, 1990 and is authorized to operate at 91° W.L. Hughes proposes to move Galaxy VI from 91° W.L. to 99° W.L. at the end of 1991[2] to replace Westar IV until Galaxy IV(H) is launched in 1993. [3] Hughes also states that its Galaxy VI satellite will be technically compatible with satellites adjacent to 99° W.L.

4. No oppositions to Hughes's application were filed but three parties filed comments. Contel ASC requested that Hughes clarify the date on which it plans to locate Galaxy VI at 99° W.L. to replace Westar IV. Because Contel ASC owns transponders on Westar IV, it is concerned that the satellite not be taken out of service prior to the end of service life; and it reserves the right to object to such premature action if Hughes were contemplating it.

5. GE American commented on Hughes's proposal for using Galaxy VI after Hughes's regularly assigned satellite is launched into 99° W.L. It urged the Commission to remind Hughes that it would not receive a preference over other applicants if it requests authority to relocate Galaxy VI to an available but unassigned orbital location at that time.

6. NPR submitted informal comments stating that it has contracted to purchase transponders on Galaxy IV(H) at 99° W.L. with service to begin in 1993 and is to lease transponder capacity during the interim period contingent on the grant of Hughes's requests. It urged the Commission to act favorably on Hughes's application to assure continuity of service from 99° W.L.

7. In reply to GE American, Hughes asserts that it does not intend to seek preferential treatment for any reassignment of Galaxy VI after its interim service at 99° W.L. and that it recognizes that any request for a new orbital location will likely trigger a new application processing round. In reply to Contel ASC, Hughes states that it will not begin service on Galaxy VI at 99° W.L. until the end of Westar IV's useful life, currently projected for late 1991.

II. DISCUSSION

8. Grant of Hughes's request for the interim assignment of Galaxy VI will serve the public interest, convenience and necessity. Hughes's proposal will assure that service to customers currently using Westar IV will not be disrupted. In addition, Hughes represents that it will operate Westar IV for the duration of its useful life and will not prematurely impact the economic interests of transponder owners on Westar IV such as Contel ASC. In addition, Hughes asserts, and no party disputes that operation of Galaxy VI will not cause adjacent satellite interference.

9. With respect to the ultimate orbital assignment for Galaxy VI after Galaxy IV(H) becomes operational at 99° W.L., Hughes is proceeding with its plans to operate a hybrid satellite from 91° W.L.[4] If Hughes's request to operate a hybrid satellite is granted, thus leaving Galaxy VI without a regularly assigned location, Hughes is on notice that it will not be afforded any preferential treatment for a new orbital location for Galaxy VI simply because that satellite is launched and operational.

III. CONCLUSION

10. Accordingly, pursuant to Section 0.291 of the Commission's rules on delegations of authority, IT IS ORDERED that application File No. 13-DSS-ML-90 is granted and Hughes Communications Galaxy IS AUTHORIZED to operate Galaxy VI on an interim basis at 99° W.L. after Westar IV is taken out of service in late 1991 and prior to the launch and operation of its satellite regularly assigned to 99° W.L.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Hughes Communications Galaxy, Inc., 5 FCC Rcd 3424 (1990).

[2] Hughes states that it plans to use Galaxy VI at 91^0 W.L. to provide service on a preemptable basis until it is moved to its interim assignment at 99^0 W.L. This plan is to assure that any customer using Galaxy VI at 91^0 will not experience unanticipated disruption.

[3] After Galaxy IV(H) is launched into 99^0 W.L., Hughes states that it will either move Galaxy VI back to 91^0 W.L., will use it to replace another authorized satellite or will seek a new orbital location for the satellite. Hughes acknowledges that the third option will probably necessitate instituting a new domestic fixed-satellite application processing round.

[4] An application has been filed that requests authorization to substitute a hybrid satellite for Galaxy VI and the replacement satellite for SBS IV at 91^0 W.L. *See* application File No. 20-DSS-P/LA-90.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

HUGHES COMMUNICATIONS GALAXY, INC. File No. 14-DSS-P-90

Application for Authority to Construct
Ground Spare Satellite

ORDER AND AUTHORIZATION

Adopted: July 3, 1990; Released: July 16, 1990

By the Chief, Common Carrier Bureau:

1. Hughes Communications Galaxy, Inc. (Hughes) has requested authority to construct a hybrid 4/6 GHz and 12/14 GHz domestic fixed-satellite to serve as a ground spare for the Galaxy satellite system.[1] No opposition or comments have been filed. For reasons discussed below, Hughes's request is granted.

2. Hughes states that this ground spare is necessary to provide emergency back-up service for its previously authorized single band 4/6 GHz or 12/14 GHz satellites as well as for its proposed hybrid satellites[2] in case of a launch or in orbit failure.

3. Hughes's proposed satellite will carry 24 12/14 GHz transponders, eight wideband with a bandwidth of 54 MHz and sixteen narrowband with a bandwidth of 27 MHz. Each transponder will have a nominal transmitter output power of 50 watts. The satellite also will carry 24 4/6 GHz transponders, each with a bandwidth of 36 MHz and a nominal transmitter output power of 16 watts. Four transponder channels (2 in the C-band and 2 in the Ku-band) within the communications payload are equipped with "cross-strap" switches. The 4/6 GHz portion of the satellite will be designed to serve the 48 contiguous United States (CONUS), Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands with a nominal equivalent isotropically radiated power (E.I.R.P) of 38.0 dBW. The 12/14 GHz portion will be designed to serve all of the above areas in the receive pattern and CONUS in the transmit pattern with a nominal E.I.R.P. of 45.0 dBW. The satellite will have the capability to switch four specific transponder channels to off-shore coverage to serve Alaska, Hawaii, Puerto Rico and the Virgin Islands in the Ku-band transmit beams. Hughes states that the cost of construction of this ground spare satellite is estimated at $79 million dollars and that its parent company, GM Hughes Electronics Corporation, has sufficient current assets to fund construction.

4. Grant of Hughes's request to construct an on-ground spare satellite will serve the public interest, convenience and necessity. We find that Hughes is legally, technically, financially and otherwise qualified to construct its proposed satellite pursuant to 47 C.F.R. § 25.391. Emergency replacement capacity provided by a ground spare will assure that Hughes's customers have continued service in the event of a Galaxy satellite failure.

5. Accordingly, pursuant to Section 0.291 of the Commission's rules on delegations of authority, IT IS ORDERED that application File No. 14-DSS-P-90 IS GRANTED and Hughes Communications Galaxy IS AUTHORIZED to construct a hybrid 4/6 GHz and 12/14 GHz domestic fixed-satellite in accordance with the terms, conditions and technical specifications set forth in its application to serve as a ground spare for the Galaxy satellite system.

6. Hughes Communications Galaxy is afforded thirty days from the date of release of this order and authorization to decline this authorization as conditioned. Failure to respond within that period will constitute formal acceptance of the authorization as conditioned.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] On February 9, 1990, Hughes was granted a waiver pursuant to Section 319(d) of the Communications Act, 47 U.S.C. § 319(d), to begin construction of this satellite and to make expenditures of up to $30 million.

[2] Hughes has been authorized to construct, launch and operate a hybrid satellite as a substitute for two previously authorized single band satellites to operate at 99° W.L. Hughes Communications Galaxy, Inc., 5 FCC Rcd 3423 (1990). Hughes has also applied to substitute a hybrid satellite for two other single band satellites to operate at 91° W.L. *See* application File No. 20-DSS-P/LA-90.

Before the
Federal Communications Commission
Washington, D.C. 20554

GEN. Docket No. 90-312

In the Matter of

Amendment of Part 1 of the
Commission's Rules to
Implement Section 5301 of
the Anti-Drug Abuse Act
of 1988

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1990; Released: July 16, 1990

By the Commission:

I. INTRODUCTION AND SUMMARY

1. This Notice proposes rules to collect the information necessary to implement section 5301 of the Anti-Drug Abuse Act of 1988 with respect to professional and commercial licenses issued by the Commission. Section 5301 provides Federal and state court judges the discretion to deny Federal benefits to individuals convicted of offenses consisting of the distribution or possession of controlled substances. Pub. L. No. 100-690, 102 Stat. 4181 (to be codified at 21 U.S.C. § 853a). Federal benefits, as used in the statute, include "the issuance of any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States." 21 U.S.C. § 853a(d)(1). Licenses issued by the FCC are clearly included within the scope of the statute.[1]

2. On August 30, 1989, the President submitted to Congress the Office of National Drug Control Policy (ONDCP) plan for implementation of section 5301. That plan proposes to use the General Services Administration (GSA) publication "Parties Excluded from Federal Procurement or Nonprocurement Programs" (commonly referred to as the "Debarment List") to notify agencies of those persons barred from Federal benefits under section 5301. Under the plan, the United States Sentencing Commission will formulate sentencing guidelines, and the Administrative Office of the United States Courts will develop a "Denial of Federal Benefits" form. The form, filled out by sentencing judges, will be sent to the Department of Justice (DOJ), acting as a clearing house, and DOJ will forward the information to GSA for inclusion in the Debarment List.

3. Agencies administering Federal benefit programs will be responsible for checking the Debarment List for section 5301 denials prior to the award of any Federal benefit. In addition, ONDCP expects agencies to use what it refers to as a "common rule established among Federal agencies for nonprocurement programs" that requires applicants to certify as to their eligibility. The ONDCP plan also indicates that in "instances where denial of an existing benefit is at issue" each agency "will determine the manner and time frame for benefit termination."

4. No rule changes are necessary to implement use of the Debarment List in connection with applications. The application forms used by the Commission do not, however, include the certification referred to in the ONDCP plan. We therefore propose to amend Part 1 of the Commission's rules by adding a new Subpart P, 47 C.F.R. § 1.2001 *et seq.*, which will require applicants to certify that neither they nor any parties to the application are subject to a section 5301 bar on Federal benefits.[2] Applications that do not contain such a certification will be dismissed. We also propose to require licensees to inform the Commission if they or any of their principals become subject to a section 5301 bar during the course of the license term.

II. EFFECT OF § 5301 BAR ON PARTIES TO APPLICATIONS AND LICENSEE PRINCIPALS

5. The section 5301 bar on Federal benefits relates to an "individual" convicted of drug distribution or possession. 21 U.S.C. § 853a(a). The statute does not indicate whether a non-individual (*e.g.*, corporate) applicant is also barred from Federal benefits if one of its principals has been denied Federal benefits pursuant to section 5301. The legislative history suggests, however, that an applicant will not be eligible when an individual who is subject to the bar remains a party to the application. *See* 134 Cong. Rec. S15970, S15973, S15974 (daily ed. Oct. 14, 1988) (statements of Sen. Gramm). In light of this legislative intent, we propose to apply the certification and information collection requirement to all parties to applications and licensee principals, as defined below.

6. We propose to adopt a new uniform definition of a "party" or a "principal" for purposes of our implementation of section 5301. For the most part, existing Commission definitions of "party" or "principal" serve regulatory policies unrelated to the concerns embodied in section 5301. For example, "passive" investors may reasonably be excluded from consideration where the regulatory policy relates to who exercises influence or control over an applicant. Where a substantial passive investor has been barred from Federal benefits for drug trafficking or possession, however, a grant to an applicant including that investor appears to be contrary to congressional intent. It is also our tentative view that, in this context, an applicant's eligibility should not be adversely affected by the actions of individuals holding less than a 5% interest. We believe this is a reasonable balance between furthering the goals of section 5301 while not punishing "innocent" applicants for the behavior of minor shareholders over whom they have no control (and, indeed, of whom they may not even be aware). For purposes of collecting information under section 5301, we propose that "parties to applications" and "principals" should include: officers, directors, non-limited partners, holders of 5% or more of the voting stock, and non-voting stockholders or limited partners with a similar (5% or more) interest in the applicant or licensee. Commenters are invited to address themselves to the scope of our proposed definition of "parties" and "principals."

III. LICENSES SUBJECT TO § 5301

7. Section 5301 does not include a definition of the term "license," and the legislative history is not instructive in this regard. We propose to use the definition of "license" contained in section 551(8) of the Administrative Procedure Act:

> [L]icense includes the whole or part of an agency permit certificate, approval, registration, charter, membership statutory exemption or other form of permission.

5 U.S.C. § 551(8). Under this definition, with one exception discussed below, our rules would apply to all forms of Commission instruments of authority, including, for example, authorizations for the use of of the radio spectrum, radio operator authorizations, equipment certifications, type acceptances or type approvals, and certificates of authority to construct communications lines under 47 U.S.C. § 214.[3]

8. The terms "professional" and "commercial" as modifiers of the term "license" are also not defined in the statute or its legislative history. A common sense reading of these terms indicates that we should collect information concerning any denials of Federal benefits from applicants for any licenses that are professional in nature or that may be used for commercial purposes. Amateur radio operation is the only activity licensed by the Commission for which "professional" and "commercial" use is prohibited. *See* 47 C.F.R. § 97.110, § 97.112. In all other instances, the Commission authorization may be used for "professional" or "commercial" purposes.[4] For example, certain broadcast stations are "noncommercial educational" stations licensed to "nonprofit educational organizations,"[5] but a portion of the licensed facilities may be used for commercial purposes. *See* 47 C.F.R. §§ 73.593, 73.621(g). Thus, we propose that applicants for Commission licenses and instruments of authority except amateur radio licenses would be required to supply information on any denials of "Federal benefits" imposed under section 5301.[6] We request comment on our interpretations of the terms "licenses" and "professional" and "commercial" licenses.

IV. TERMINATION OF LICENSES

9. The term "issuance" in the definition of "Federal benefits" in section 5301(d)(1) is also not defined in the statute. The legislative history is somewhat ambiguous on whether revocation of an existing benefit falls within the scope of the statute.[7] *Compare* 134 Cong. Rec. S15969 (daily ed. Oct. 14, 1988) (statement of Sen. Nunn) ("[I]f you have a license to operate a radio station and you are smoking marijuana, you are subject to losing that license.") *with id.* at S15973 (statement of Sen. Nunn) ("I think that the word [issuance] was chosen with meaning and carefully, meaning that if there already is an outstanding grant or contract the judge is not going to come in and terminate it in midstream.") *and ibid.* (statement of Sen. Gramm) ("The amendment would not, however, invalidate the one [guaranteed student loan] that already exists."). As noted above, however, the ONDCP plan encompasses the termination of existing benefits. To enable the Commission, consistent with the ONDCP plan, to initiate appropriate proceedings with regard to existing licensees who are subject to section 5301 denials of benefits, we are proposing a rule requiring licensees to notify the Commission of any section 5301 bar imposed on the licensee or any of its principals during the license term. Commenters, however, should address whether the statute contemplates revocation of license and, if so, the appropriate procedures to acheive that end.

V. CONCLUSION

10. We request comment on the matters set forth above and our specific rule proposal, as set forth in Appendix A hereto. Moreover, it should be noted that, during the course of this proceeding, section 5301 may be subject to further interpretation by the Office of National Drug Control Policy, the Department of Justice, or the courts. If appropriate, we will take official notice of any such interpretations in the Report and Order in this proceeding.

VI. PROCEDURAL MATTERS

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* 47 C.F.R. § 1.1206 *et seq.* The Sunshine Agenda period commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter, (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda, or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. 47 C.F.R. §1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. 47 C.F.R. § 1.1203.

12. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

13. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. The memorandum (as well as any transmittal letter) must clearly indicate on its face that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation, Section 1.1206.

14. Pursuant to applicable procedures set forth in 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments 30 days after publication of a summary of this Notice in the Federal Register and reply comments may be filed 15 days thereafter. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personnal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington D.C. 20554.

15. The rules proposed herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520, and found to impose new or modified requirements or burdens on the public. Implementation of this new collection of information requirement will be subject to approval by the Office of Management and Budget (OMB). 44 U.S.C. § 3507.

16. An Initial Regulatory Flexibility Analysis is attached hereto as Appendix B.

17. IT IS ORDERED that a copy of this Notice of Proposed Rule Making shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

18. This action is taken pursuant to authority contained in sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 303(r) and section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 823a.

For further information concerning this proceeding, contact Martin Blumenthal, Office of General Counsel (202) 254-6530.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

Part 1, Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

I. Part 1 - Practice and Procedure

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552, unless otherwise noted.

2. A new Subpart P is proposed to be added to read as follows:

Subpart P - Implementation of the Anti - Drug Abuse Act of 1988

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154; Implement 21 U.S.C. 853a.

§ 1.2001. Purpose.

To determine eligibility for professional and/or commercial licenses issued by the Commission with respect to any denials of Federal benefits imposed by Federal and/or state courts under authority granted in 21 U.S.C. 853a.

§ 1.2002. Applicants required to submit information.

(a) In order to be eligible for any new, modified, and/or renewed instrument of authorization from the Commission, including authorizations issued pursuant to sections 214, 301, 302, 303(1), 308, 310(d), 318, 319. 325(b), 351, 361(b), 362(b), 381, and 385 of the Communications Act of 1934, as amended, by whatever name that instrument may be designated, all applicants shall certify that neither the applicant nor any party to the application is subject to a denial of Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988. 21 U.S.C. § 853a. If a section 5301 certification has been incorporated in the application form being filed, the applicant need not submit a separate certification. If the applicant is unable to so certify, it shall be ineligible for the authorization for which it applied, and the application shall be dismissed.

(b) A party to the application, as used in subsection (a) shall include:

(1) if the applicant is an individual, that individual;

(2) if the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting or non-voting) of the applicant; and

(3) if the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership.

(c) The provisions of subsections (a) and (b) are not applicable to the Amateur Radio Service, the Citizens Band Radio Service, the Remote Control Radio Service, or to users in the Public Mobile Services and the Private Land Mobile Radio Services that are not individually licensed by the Commission.

§ 1. 2003. Applications affected.

The certification required by § 1.2002 must be filed with the following applications as well as any other requests for authorization filed with the Commission, regardless of whether a specific form exists.

FCC 301	Application for Construction Permit for Commercial Broadcast Station;

FCC 301-A	Application for Authority to Operate a Broadcast Station by Remote Control or to Make Changes in a Remote Control Authorization;
FCC 302	Application for New Broadcast Station License;
FCC 303-S	Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station;
FCC 307	Application for Extension of Broadcast Construction Permit or to Replace Expired Construction Permit;
FCC 308	Application for Permit to Deliver Programs to Foreign Broadcast Stations;
FCC 309	Application for Authority to Construct or Make Changes in an International or Experimental Broadcast Station;
FCC 310	Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License;
FCC 311	Application for Renewal of an International or Experimental Broadcast License;
FCC 313	Application for Authorization in the Auxuliary Radio Broadcast Services;
FCC 313-R	Application for Renewal of Auxiliary Broadcast License;
FCC 314	Application for Consent to Assignment of Broadcast Station Construction Permit or License;
FCC 315	Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License;
FCC 316	Application for Consent to Assignment of Radio Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Radio Broadcast Station Construction Permit or License;
FCC 327	Application for Cable Television Relay Service Station Authorization;
FCC 330	Application for Authorization to Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or to Assign or Transfer Such Stations;
FCC 330-L	Application for Instructional Television Fixed Station License;
FCC 330-R	Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License;
FCC 340	Application for Construction Permit for Noncommercial Educational Broadcast Station;
FCC 345	Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit, for an FM or TV Translator Station, or a Low Power Television Station;
FCC 346	Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator or TV Booster Station;
FCC 347	Application for a Low Power TV, TV Translator or TV Booster Station License;
FCC 348	Application for Renewal of License for Translator or Low Power Television Broadcast Station;
FCC 349	Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station;
FCC 350	Application for an FM Translator or FM Booster Station License;
FCC 401	Application for New or Modified Common Carrier Radio Station Authorization Under Part 22;
FCC 402	Application for Station Authorization in the Private Operational Fixed Microwave Radio Service;
FCC 402-R	Renewal Notice and Certification in the Private Operational Fixed Microwave Radio Service;
FCC 403	Application for Radio Station License or Modification Thereof Under Parts 23 or 25;
FCC 404	Application for Aircraft Radio Station License;
FCC 405	Application for Renewal of Radio Station License in Specified Services;
FCC 405-A	Application for Renewal of Radio Station License and/or Notification of Change to License Information;
FCC 405-B	Ship/Aircraft License Expiration Notice and/or Renewal Application;
FCC 406	Application for Ground Station Authorization in the Aviation Services;
FCC 407	Application for New or Modified Radio Station Construction Permit;
FCC 409	Airborne Mobile Radio Telephone License Application;
FCC 410	Registration of Canadian Radio Station Licensee and Application for Permit to Operate (Land Mobile);
FCC 442	Application for New or Modified Radio Station Authorization Under Part 5 of FCC Rules - Experimental Radio Service (Other than Broadcast);
FCC 490	Application for Assignment or Transfer of Control Under Part 22;

FCC 493 (Proposed)	Application for Earth Station Authorization or Modification of Station License;
FCC 494	Application for a New or Modified Microwave Radio Station License Under Part 21;
FCC 494-A	Certification of Completion of Construction Under Part 21;
FCC 503	Application for Land Radio Station License in the Maritime Services;
FCC 506	Application for Ship Radio Station License;
FCC 574	Application for Private Land Mobile and General Mobile Radio Services;
FCC 574-R	Application for Renewal of Radio Station License;
FCC 701	Application for Additional Time to Construct a Radio Station;
FCC 702	Application for Consent to Assignment of Radio Station Construction Permit or License;
FCC 703	Application for Consent to Transfer Control of Corporation Holding Station License;
FCC 704	Application for Consent to Transfer of Control of Corporation Holding Common Carrier Radio Station Construction Permit or License;
FCC 730	Application for Registration of Equipment to be Connected to the Telephone Network;
FCC 731	Application for Equipment Authorization;
FCC 753	Restricted Radiotelephone Operator Permit Application;
FCC 755	Application for Restricted Radiotelephone Operator Permit - Limited Use;
FCC 756	Application for Commercial Radio Operator License.

§ 1.2004. Licensees required to submit information.

With the exception of the services exempted in §1.2002(c), if a licensee, permittee, or holder of any other instrument of Commission authorization, or any party thereto as defined in § 1.2002(b), is denied Federal benefits pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 853a, the licensee, permittee, or holder of any other instrument of Commission authorization must notify the Commission of that action within 30 days for the issuance of the judicial order imposing the section 5301 bar, and such notification must provide the following information:

(a) The identity of the individual(s) declared ineligible for Federal benefits and his or her (or their) relationship to the applicant;

(b) The court in which the individual(s) were convicted;

(c) The offense for which the individual(s) were convicted; and

(d) The sentence imposed, the date on which it was imposed, and the beginning and ending dates of the ineligibility imposed as a part of the sentence.

APPENDIX B

INITIAL REGULATORY FLEXIBILITY ANALYSIS

I. Reason for the Action:

This proceeding is initiated to implement section 5301 of the Anti-Drug Abuse Act of 1988 and the implementation plan proposed by the Office of National Drug Control Policy (ONDCP) relating to denials of Federal benefits, including authorizations issued by the Federal Communications Commission, to persons barred from such benefits under section 5301.

II. Objective of this Action:

To ensure that the Commission does not grant authorizations to persons subject to a section 5301 denial of Federal benefits, this proceeding proposes to require applicants to certify that neither they nor any party to the application is subject to a section 5301 bar.

III. Legal Basis:

This proceeding is initiated under sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, and section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 823a.

IV. Number and Type of Small Entities Affected by the Proposed Rule:

As proposed, the rule will affect all Commission licensees and applicants with the exception of licensees and applicants in the Amateur Radio Service. Because single entities may hold multiple licenses and/or file multiple applications, the actual number of entities affected will be substantially less than the total number of licenses that the Commission has issued and has outstanding in the covered services (over 2 million) and the number of applications the Commission may receive in the covered services in any given year (between 500,000 and 800,000). The affected entities may be individuals or large or small communications companies as well as large or small companies in other fields that utilize Commission authorizations in their line of endeavor.

V. Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:

The proposed rule would require licensees and applicants to collect information on any denials of Federal benefits imposed under section 5301 after the applicant or licensee, or any party thereto, has been convicted for drug possession or trafficking. Each covered applicant would be required to certify that neither it nor any party to the application is subject to a section 5301 bar. Applicant subject to a section 5301 denial of Federal benefits would be ineligible and their application would be dismissed. Licensees will be required to report to the Commission on any section 5301 bars imposed during the license term.

VI. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rule:

There are no Federal rules which duplicate or conflict with the proposed rule. However, the ONDCP plan also provides that persons debarred from Federal benefits under section 5301 will be included on the General Services Administration Debarment List, and agencies must check that list before issuing any grants. In certain circumstances, this aspect of the ONDCP plan may overlap with the certification requirement. However, certification, as proposed in this proceeding, is also contemplated in the ONDCP plan, and certification appears to be a necessary requirement to full implementation by the FCC of section 5301.

VII. Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objective of the Action:

The Commission is seeking comment on its proposal and is open to any suggestions which would fully implement section 5301 and the ONDCP plan with a minimum of cost or inconvenience to licensees and applicants.

FOOTNOTES

[1] *See, e.g.*, 134 Cong. Rec. S15964, S15969 (daily ed. October 14, 1988) (statements of Sen. Gramm).

[2] The Managing Director will take the necessary steps to include the certification in the relevant Commission forms as they are routinely re-issued. We note, however, that the certification requirement, once adopted, will apply regardless of whether it is contained in a particular form.

[3] We do not believe that requests for waivers, unassociated with applications for other authority, constitute a "license" for purposes of section 5301.

[4] For example, in the aviation and marine services, certain operator's licenses may be used for both private (hobby) and commercial purposes. *See* 47 C.F.R. §§ 87.87, 87.89(d) (aviation) and 47 C.F.R. §§ 80.151, 80.159(c) (marine).

[5] *See* 47 C.F.R. §§ 73.503, 73.621.

[6] Because they do not involve applications or the issuance of individual authorizations or licenses by the Commission, we do not believe that "blanket" authorizations are subject to the section 5301 bar. For example, in the Public Mobile Radio Services, mobile units (like cellular telephones) are not individually licensed. *See* 47 C.F.R. Part 22. Although the system license would be the subject of a section 5301 bar, under our proposal, individual users authorized by the licensee would not. Similarly, in the Citizens Band, Remote Control, and Private Land Mobile Radio Services, certain operations are authorized without individual licenses. *See* 47 U.S.C. § 307(e); 47 C.F.R. §§ 95.204, 95.404, 90.179(c), 90.603(b). We do not believe a section 5301 denial of Federal benefits would bar such authorizations.

[7] In addition to initial authorizations, the grant of a renewed license, as well as grants of assignments, transfers, and modifications of existing licenses, obviously are "issuance[s]" covered by section 5301.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-558

In re Applications of

VICTORSON GROUP, INC.	File No. BPH-870918MF
EISON AND ASSOCIATES, LIMITED	File No. BPH-870918MJ
R.B. LEE RUST	File No. BPH-870918MQ
TAYLOR COMMUNICATIONS OF ROCHESTER	File No. BPH-870918NE
CHRISTIAN DISCERNER, INC.	File No. BPH-870918NB
BEST BROADCASTING COMPANY, L.P.	File No. BPH-870918NN

For a Construction Permit for a
New FM Station on Channel 290A
in Rochester, New York

Appearances

Shelley Sadowsky and *Heidi P. Sanche* on behalf of Victorson Group, Inc.; *Michael Drayer* and *Michael H. Rosenbloom* on behalf of Eison & Associates; *Richard A. Helmick* on behalf of R. B. Lee Rust; *Nora E. Garrote* on behalf of Taylor Communications of Rochester; *James C. Oyster* on behalf of Christian Discerner, Inc.; and *William Crispin* and *William E. Kennard* on behalf of Best Broadcasting Company, L.P.

INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE JOHN M. FRYSIAK

Issued: July 3, 1990; Released: July 16, 1990

PRELIMINARY STATEMENT

1. This proceeding involves the mutually exclusive applications of Victorson Group, Inc. ("Victorson"), Eison and Associates, Limited ("Eison"), Taylor Communications of Rochester ("Taylor"), Christian Discerner, Inc. ("Discerner"), Best Broadcasting Company, L.P. ("Best") and R.B. Lee Rust ("Rust").[1] These mutually exclusive applications were set for hearing in *Hearing Designation Order*, ("HDO") DA 88-1846, released January 10, 1989, and the following issues, relevant to those remaining applicants prosecuting their applications, were specified for adjudication in this proceeding:

(1) If a final environmental impact statement is issued with respect to Victorson, Eison, Taylor, or Best in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by 46 C.F.R. §§1.1301-1319;

(2) To determine whether the proposal of Taylor would provide coverage of the city sought to be served, as required by 47 C.F.R. §73.315(a), and if not whether circumstances exist which would warrant waiver of that Section;

(3) To determine whether there is a reasonable possibility that the tower height and location proposed by Victorson, Eison, Taylor and Best would constitute a hazard to air navigation;

(4) To determine with respect to Eison whether the applicant is financially qualified;

(5) To determine which of the proposals would, on a comparative basis, best serve the public interest; and

(6) To determine, in light of the evidence adduced pursuant to these specified issues, which of the applications should be granted, if any.

2. Subsequent to the release of the HDO, *Memorandum Opinion and Order*, FCC 89M-1915, released July 20, 1989, enlarged the issues against Best to include the following two additional issues (issues 7 and 8):

(7) To determine whether or not Best is financially qualified to construct and operate its proposed station for three months without revenues, and, if not, to determine the effect thereon on its basic qualifications to be a Commission licensee; and

(8) To determine whether or not Best engaged in misrepresentations in certifying as to its financial qualifications, and, if so, to determine the effect thereon on its basic qualifications to be a Commission licensee.

3. The air hazard issues (issue No. (3)) specified against Taylor, Victorson and Best, as well as the principal city coverage issue (issue No. (2)) against Taylor were resolved in favor of those applicants by *Memorandum Opinion and Order*, FCC 89M-662, released March 1, 1989. The contingent environmental impact issue (issue No. (1)) and the air hazard issue (issue No. (3)) against Eison were, respectively eliminated from the HDO and resolved in Eison's favor by *Order*, FCC 89M-775, released March 13, 1989. The contingent environmental impact issue (issue No. (1)) against Victorson was deleted from the HDO by *Order*, FCC 89M-1671, released June 15, 1989. The contingent environmental impact issue (issue No. (1)) against Taylor was deleted from the HDO by *Order*, FCC 89M-1670, released June 15, 1989. The contingent environmental

impact issue (issue No. (1)) against Best was deleted from the HDO by *Order*, FCC 90M-236, released February 7, 1990.

4. A prehearing conference was held on June 7, 1989 and hearings were held on September 25-29, 1989. The hearing record in this proceeding was closed by the Presiding Officer at the conclusion of the September 29, 1989 hearing session. *Order*, FCC 89M-2395, released October 4, 1989.

Findings of Fact

Basic Qualifying Issue - Financial Qualification

5. *Eison and Associates, Limited.* A financial qualification issue was designated against Eison in the HDO because Eison indicated in response to Section III of the FCC Form 301 (October 1986 edition) that it was presently unable to certify that it was financially qualified, but that its financial proposal was being formulated (HDO at para. 11). Eison amended its application on February 16, 1989, reporting that its financial proposal had been arranged and that it was now financially qualified (Victorson Exh. 8). By *Memorandum Opinion and Order*, FCC 89M-952, released March 24, 1989, Eison's amendment was accepted. Because of the questions raised in opposition to it, Eison's Motion for Summary Decision on the designated financial qualification issue, filed contemporaneously with the February 16, 1989 amendment, was denied by the same *Memorandum Opinion and Order*.

6. Eison's September 11, 1989 further financial qualification amendment and its direct case exhibit on the designated financial qualifications issue both included (1) revised budgetary information reflecting an upward revision of $81,250 in Eison's estimate over the budgetary information supplied in the February 16, 1989, amendment (Eison Exh. 6A at 4-6);[2] (2) a letter dated August 30, 1989 from the First National Bank in Durant, Oklahoma, to Messrs. Webb and Wheeler (replacing the February 8, 1989 letter) providing for $600,000 in total loan financing available for the prosecution of the Eison application and subsequent construction and initial operation of the station (Eison Exh. 6B at 36-37); (3) a letter dated August 10, 1989, from Messrs. Webb and Wheeler to John P. Martin, Vice President of the First National Bank in Durant confirming their willingness to personally guarantee any funding extended by the bank for the FM station (Eison Exh. 6C at 38); (4) a letter dated September 5, 1989, from Carvin Eison to John P. Martin, Vice President of the First National Bank in Durant confirming his willingness to personally guarantee funding for the construction and operational expenses loan (Eison Exh. 6D at 39); (5) a loan agreement dated September 1, 1989, by and between Carvin Eison and Messrs. Webb and Wheeler (Eison Exh. 6E at 40-44); and (6) a Promissory Note dated September 6, 1989, in the amount of $21,695 from Carvin Eison to Messrs. Webb and Wheeler (Eison Exh. 6F at 45-46). Eison's direct case exhibits on the financial qualifications issue also included its original December 9, 1987 Harris equipment proposal (Eison Exh. 6 at 7-35); Eison's Amended Agreement of Limited Partnership dated March 30, 1989 (Eison Exh. 7); and a September 8, 1989 Amendment to Eison's Amended Agreement of Limited Partnership (Eison Exh. 8).

7. In particular, Eison budgeted $441,500 to meet its projected expenses for construction and the first three months' operation of the station without recourse to anticipated revenues (Eison Exh. 6A). Of this amount, $130,000 has been estimated to cover preoperational legal and FCC filing fees, and an additional $201,000 has been estimated to cover engineering, installation, equipment and other preoperational expenses and construction costs prior to the commencement of operation (*Id.*). The remaining $110,500 has been budgeted for its estimated first three months of operation (*Id.*). Eison's budget includes an equipment proposal from the Harris Corporation dated December 9, 1987 (Eison Exh. 6A at 7-35).

8. Eison relies on a letter from the First National Bank in Durant, Oklahoma, stating the bank's willingness to provide a total of $600,000 in loan financing for the Eison application (Eison Exh. 6B). As indicated in the bank's letter, $200,000 has been made immediately available as a line of credit to Allen Wheeler and David Webb, Jr., Eison's limited partners, to fund the prosecution and pregrant expenses associated with the application (Eison Exh. 6B). The $200,000 line of credit is secured by the personal guarantees of Messrs. Webb and Wheeler, and by a $100,000 certificate of deposit, set aside by Messrs. Wheeler and Webb on a deposit at the First National Bank in Durant (Eison Exh. 6B). In addition, the bank has stated its willingness to extend a loan to Eison in the amount of $400,000 for the purposes of construction and operation of the station for the first three months if Eison is successful in obtaining the construction permit (*Id.*). Eison's limited partners, Messrs. Wheeler and Webb, and its general partner, Carvin Eison, have confirmed in writing their willingness to personally guarantee and collateralize, to the extent indicated, the loan from the First National Bank (Eison Exhs. 6C and 6D).

9. Instead of relying on the line of credit, the partners have thus far made $100,781 in capital contribution from their own funds in support of the application (Eison Exhs. 6 and 8). These funds were influxed directly by the partners without reference to any loans, with the exception of funds in the amount of $21,695 made available by Messrs. Wheeler and Webb to Mr. Eison to cover his capital contribution commitments under the Amended Agreement of Limited Partnership (Eison Exhs. 6, 6E, 6F, 7 and 8). The funds loaned to Mr. Eison by Messrs. Webb and Wheeler are evidenced by a Loan Agreement and a Promissory Note (Eison Exhs. 6E and 6F). Aside from these loaned funds, Mr. Eison has contributed $3,500 of his own funds to Eison (Eison Exh. 6 at 3; Tr. 327, 334, 344-45, 396).

10. *Best Broadcasting Company, L. P.* Wyoma Best, the sole general partner of Best, certified that Best was financially qualified to construct and operate the proposed FM station for three months without recourse to revenues when the Best application was originally filed with the Commission on September 18, 1989 (Tr. 942-43).

11. The financial qualification and certification issues against Best were added in light of the deposition testimony of Best's sole general partner, Wyoma Best, which revealed that prior to filing the Best application and certifying the applicant financially qualified, Wyoma Best had not prepared an adequate budget of anticipated costs and did not have reasonable assurance of available funds. In particular, Wyoma Best testified at her deposition that she had no written cost estimates, had only a general idea of equipment costs, and had a September 15, 1987 letter

from Ragan A. Henry which discussed his loaning funds only for construction costs (as distinguished from the first three months operating costs) and which was missing other key terms. Further, she had never seen any documentation regarding Ragan Henry's assets, relying instead upon oral assurances from Best's counsel, David Honig, regarding Ragan Henry's purported financial capacity.[3] *See* Eison's June 19, 1989 Motion to Enlarge Issues. Best's July 3, 1989, Opposition to Motion to Enlarge Issues admitted that no written budget or financial plan existed prior to the filing of the Best application.

12. The only direct evidence on Best's basic qualifying financial qualification and financial certification misrepresentation issues received into evidence was that which was timely exchanged by Best on the September 11, 1989 direct case exhibit exchange date. This evidence consisted of five exhibits. Best Exhibit 5 is a letter dated September 14, 1987, from Frederick Blake to Wyoma Best with an attached contract (Tr.866-68). Best Exhibit 6 is a letter dated September 15, 1987, from Ragan A. Henry to Wyoma Best. Best Exhibit 7 is a letter dated February 21, 1989, from Ragan A. Henry to Wyoma Best. Best Exhibits 8 and 9 are redacted Statements of Assets and Liabilities of Ragan A. Henry dated August 3, 1987 and July 12, 1989, respectively. The only unmasked portions of Best Exhibits 8 and 9 are the title, date and the lump sum total assets, total liabilities and approximate net worth (Tr. 869-75).

13. Best attempted to supplement its direct case exhibits with three additional documents (Tr. 709-18) -- the transcript of the deposition of David E. Honig taken by counsel for Eison on September 14, 1989 (subsequently identified as Best Exh. 11 (Tr. 929)), the transcript of the deposition of Ragan A. Henry taken by counsel for Eison on September 14, 1989 (subsequently identified as Best Exh. 12 (Tr. 929-30)), and an Agreement dated September 21, 1989 (subsequently identified as Best Exh. 10, Tr. 772-73). Each was rejected (Tr. 709-18, 875-76).

14. There is no evidence in the record that indicates that Best ever prepared a budget or estimate of financial requirements necessary to construct and operate the proposed facilities for three months without revenue. Mrs. Best engaged the services of Frederick Blake, a management consultant with Blake & Associates, to develop a business plan for Best before September 17, 1987 (Best Exh. 5). However, at the specific request of Mrs. Best, Mr. Blake did not prepare the business plan for Best (Tr. 867).

15. Mrs. Best did receive from Best's communications counsel prior to the filing of the Best application an oral estimate of $30,000 for legal prosecution costs, which included his legal fees, FCC filing fees, and the comparative hearing fee through the Initial Decision. Best's local counsel projected the costs of drafting a limited partnership agreement at $800 (Tr. 943, 946, 949-950, 953, 957). In discussing the project with Vincent Henry, Best's 79.9% limited partner, prior to the filing of the application, Mrs. Best told him that construction costs would amount to approximately $300,000 (Tr. 745). By letter dated September 15, 1987, Mrs. Best was advised by Ragan Henry that he would loan to Best, subject to certain contingencies, $300,000 to build the proposed station (Best Exh. 6).

16. Prior to the filing of the Best application, Mrs. Best did not review any financial statements. She did not review her own financial statement (Tr. 951-52, 987). She did not ask for, see, or review a personal financial statement from Best's 79.9% limited partner Vincent Henry (Tr. 739-40, 951). There is no evidence in the record that she ever asked for or reviewed a personal financial statement from Ragan Henry. Mr. Ragan Henry is the only person to whom Mrs. Best made a request for financing prior to the filing of the Best application (Tr. 932). She did not contact any bank or other financial institution to arrange financing for the Best application or for construction and initial operating expenses (Tr. 933).

17. Ragan Henry's expressed willingness of September 15, 1987 to "personally lend Best . . . up to $300,000 . . . to build the station" did not state the terms of the potential loan, any anticipated repayment time frame or deferment possibilities (Best Exh. 6). Nor did the September 15, 1987 letter provide any additional information or any documentation regarding Ragan Henry having sufficient monies available in readily convertible assets to pay for the cost of construction (*Id.* Tr. 932).

18. Although Ragan Henry required personal guarantees from Wyoma Best and Vincent Henry, none were provided prior to the filing of the application and were not drawn up until the eve of the hearing (September 21, 1989) (Tr. 770-71, 776-881).

19. Vincent Henry, who at the time the Best application was filed, held a 79.9% limited partnership interest, had no involvement in the financial certification (Tr. 726). He was not responsible for putting together any of the financial aspects of the application (Tr. 746-47) and never sought or even discussed financing for Best with his father Ragan Henry (Tr. 757-58).

20. Mrs. Best testified that Best was relying upon herself and Vincent Henry personally for all litigation expenses (Tr. 950). However, neither one received any personal financial information from the other (Tr. 734-36, 739-40, 811, 951).

21. Prior to the filing of the Best application, a limited partnership agreement between Wyoma Best and Vincent Henry was executed (Eison Exh. 14; Tr. 740-41, 750-51).[4] Pursuant to the express terms of the limited partnership agreement, the sum total of the partners' financial obligation to the partnership was $5,000 (Eison Exh. 14 at §§4.01 and 4.02). Any additional monies needed for prosecution of the application could be influxed by either capital contributions or loans, but no requirement or obligation to do so existed (Eison Exh. 14 at §4.05; Tr. 740-44). Despite the apparent understandings of both Wyoma Best and Vincent Henry that litigation costs would run to at least $30,000 just to cover costs through the Initial Decision, no provision was ever made in any agreement between them to assure the availability of this amount of money (Tr. 743-45, 802-03, 815-16, 855-56; 946-47, 950; Eison Exh. 14).

22. Vincent Henry in the spring of 1989 decided to reduce his liability and financial responsibility by reducing his equity interest in Best (Tr. 842-43; 971-72). Following Vincent Henry's decision to halve his equity by selling a 40% limited partnership equity interest in Best back to the partnership, Wyoma Best contacted Emilio Serrano, the President of Ibero American Investors Corp. ("Ibero") regarding that company becoming a limited partner in Best (Tr. 881, 933-34, 980-87).

23. On June 13, 1989, Ibero loaned Best $22,750 (Eison Exh. 24; Tr. 1043, 1060). Ibero had not, at that time, received SBA approval to become a limited partner in

Best (Tr. 987-91). The $22,750 loan is evidenced by a Promissory Note carrying a 13% per annum interest rate, signed by Wyoma Best individually and in her capacity as general partner of Best on August 4, 1989 (Eison Exh. 23; Tr. 987). Pursuant to the express terms of the Note, payments in the amount of $689.65 per month are due to commence on July 13, 1990, with the entire principal and interest due and payable by June 13, 1994 (Eison Exh. 24; Tr. 995-96).

24. Following receipt of SBA approval, Ibero became a 20% limited partner in Best on July 21, 1989, after Mr. Serrano signed the amendment to the limited partnership agreement in his capacity as President of Ibero (Tr. 936-37, 988-91, 1048-49; Eison Exh. 22). At that time, Ibero made a $2,500 capital contribution to Best (Tr. 1061). On or about August 4, 1989, Ibero disbursed an additional $5,000 to Best (Tr. 1018). Thus, as of the hearing, Ibero had influxed a total of $30,250 into Best (Tr. 1062).

25. Mr. Serrano understands that, by the express terms of the amended limited partnership agreement, Wyoma Best has the right to request funds from Ibero, but that Ibero has no obligation to influx monies into Best, beyond its initial $2,500 capital contribution (Tr. 1061-64; Eison Exh. 22). When Ibero became a 20% limited partner, Serrano understood the total estimated litigation expenses for the entire project could be as high as $60,000 to $75,000 (Tr. 1065-66). Prior to September 19, 1989, neither Wyoma Best, Mr. Serrano, nor the Ibero Board of Directors had ever discussed the possibility of forbearing payment on Ibero's loans to the partnership (Tr. 998-1002, 1078-81).

26. On July 21, 1989, Mr. Julio Vasquez became a 20% equity limited partner in Best and made a $2,500 capital contribution (Tr. 1092). He understood at that time that he had no obligation to put any additional money into Best (Tr. 1094-95). He also understood at that time that the total cost of the project, for purposes of ascertaining his 20% liability, was $60,000 over a three-year period (Tr. 1092-96). Vasquez was prepared to invest up to $12,000 when he became a 20% limited partner (Tr. 1094, 1096). He understood that these funds would be used for prosecution costs (Tr. 1098-99, 1103). However, he had never seen, at that time, any financial statement for Best, any budgets, or any projections of legal expenses (Tr. 1098-99).

27. On August 4, 1989, a partnership meeting was held for the purpose of discussing additional funding needs of the partnership (Tr. 964-65). Wyoma Best had prepared, for presentation at the meeting, a budget of anticipated litigation costs which showed a bottom line of $63,250, exclusive of an undetermined amount due for legal fees not billed by David Honig since January 2, 1989 (Tr. 964-71; Eison Exh. 21). This projected $63,250 was only to cover the period from July through December, 1989 (Tr. 965-66). Neither Vincent Henry, Emilio Serrano, nor Julio Vasquez were apparently aware that the $63,250 total was not meant to cover the entire projected litigation expenses through to grant (Tr. 826-27, 1066, 1092-93).

Standard Comparative Issues

28. *Victorson Group, Inc.* Victorson is a corporation organized under the laws of the State of New York. Its certificate of incorporation was filed with the New York State Department of State on September 4, 1987. Victorson has authorized the issuance of 200 shares of stock, 100 of them voting, and 100 non-voting shares. Seventy shares of voting stock have been issued, and 30 shares of non-voting stock. The officers, directors, and shareholders of Victorson are Scott Gudell, President, Director, and owner of 40 shares of voting stock (57.2% of the voting stock); Jerdine Johnson, Secretary, Director, and owner of 15 shares (or 21.4%) of voting stock; Kathleen McGraw, Treasurer, Director, and owner of 15 shares (21.4%) of voting stock; and Vincent Micciche, Jr., owner of 30 shares of non-voting stock (Victorson Exh. 1; Tr. 31). All decisions have been made, and will be made, by Gudell, Johnson, and McGraw (Tr. 43, 64, 103, 155).

29. Neither Victorson nor any of its individual voting or non-voting shareholders holds any ownership interest, office, or directorship in any medium of mass communications (Victorson Exh. 2; Tr. 32; see also Victorson Exhs. 3-5).

30. Scott Gudell will be the General Manager of Victorson's proposed FM station. He will have overall responsibility for all station operations. Gudell, along with Johnson and McGraw, will establish station policies and he will directly oversee the station's sales department (Victorson Exh. 3; Tr. 32, 48, 76). Gudell is currently employed as a contributing writer and account executive with *Freetime Magazine* in Rochester, which publishes there and in Buffalo. He has held those positions since August 1980, has been an account executive since July 1981 and Senior Account Executive since summer, 1982. If Victorson's application is granted, he will terminate his employment with *Freetime Magazine* or any other employment he may have in order to work full-time (a minimum of 40 hours per week) at Victorson's FM station (Victorson Exh. 3; Tr. 31, 46). Gudell is operating under a restrictive covenant with his current employer, but it applies to his future involvement in print, not broadcast media (Tr. 69, 104).

31. Gudell has resided in Rochester or its suburbs (within the predicted coverage contour of the proposed station) since his birth in 1953 (Victorson Exh. 3; Tr. 30, 69).

32. Gudell has a B.S. degree in communication arts, and an associate of science degree in Business Administration. From October 1979 to July 1981, he worked as a technical director with WUHF-TV, channel 30, in Rochester. He implemented operating procedures for the station and technically directed live programming and switching, supervising two engineers. From June 1980 to September 1983, he worked as a producer with radio station WNYR, Rochester, a sister station to WUHF-TV. In addition to production, his duties included research, writing, interviews, voicing and hosting an album review program (Victorson Exh. 3).

33. Gudell has been a member of the Rochester Professional Sales Association of the Chamber of Commerce since 1984, its Treasurer from 1986 through 1989, and Vice President since 1988. In addition, he has been a member of the Advertising Council of Rochester since 1986. He has also belonged to Citizens for a Quality Philharmonic since 1987, and co-chaired its marketing committee form January 1988 through September 1988 (Victorson Exh. 3).

34. Jerdine Johnson, a Black female, will be Victorson's full-time (40 hours or more per week) News and Public Affairs Manager, overseeing the development and production of all news and public affairs programming. She will act as liaison with the Rochester community and its or-

ganizations, and will be in charge of the station's EEO program. Johnson will be involved with Gudell and McGraw in the establishment of the station's policies (Victorson Exh. 4; Tr. 113).

35. Johnson has lived in Rochester since 1969. During the past school year, while still residing in Rochester, she attended Pratt Institute, studying Community Economic Development. Her current position is the Executive Director of the North East Block Club Alliance (NEBCA), a community-based organization funded by the New York State Division of Housing and Community Renewal, where she manages a $300,000 annual budget and supervises a staff of seven in housing rehabilitation and development, crime prevention and community organization. If Victorson's application is granted, she will terminate her current or any other employment to work full-time at the station (Victorson Exh. 4; Tr. 138).

36. Johnson's Rochester civic activities include:

Member of the board of directors of Housing Opportunities from 1987 to 1988;

Member of the board of directors of the National Forum of Black Public Administrators from 1988 to the present;

Member of the board of directors of Action for a Better Community Parent Group from 1985 to 1986;

Member of the board of directors of Susan B. Anthony Cooperative from 1986 to the present;

Member of the board of directors of the Jesse James Counseling Center from 1987 to the present;

Member of the board of directors of the Urban League from 1986 to the present;

Treasurer of the Neighborhood Preservation Coalition from 1987 to 1989; and

Recently appointed to the Rochester Fight-Back Task Force on Substance Abuse (Victorson Exh. 4).

37. In addition, Johnson coordinates a residential and commercial development project involving the City of Rochester, the Lewis Street Center, Genesee Settlement House, Marketview Heights Association, NEBCA, and the Urban League Economic Development Corporation. She also volunteered for a juvenile class of IBPOE Elk in 1985, organized one hundred community fashion shows for charitable fundraising from 1981 to 1986, and she has belonged to the Eldorado Temple of the Improved Benevolent Protective Order of the Elks since 1988. Before she assumed her current paid position with NEBCA, she volunteered as its president from September to December 1986 (Victorson Exh. 4).

38. Kathleen McGraw, a female, proposes to be Victorson's full-time (40 hours or more per week) Business Manager, coordinating all of the station's financial operations. She will be involved with Johnson and Gudell in establishing station policies and overseeing station operations. McGraw will terminate her employment in order to assume her position at Victorson's proposed station (Victorson Exh. 5; Tr. 141).

39. McGraw lived in Rochester from 1962 to 1973. She then lived in Webster, New York for two years, and since 1975, she has lived in Irondequoit, one-quarter mile outside the city limits of Rochester (her mailing address is in Rochester) (Victorson Exh. 5; Tr. 140-41). Irondequoit is contiguous to Rochester and within Victorson's proposed city-grade contour; Webster is to the northwest of Rochester, and within Victorson's proposed 1 mV/m contour.

40. In 1968, McGraw began her career in broadcasting as a bookkeeper at WHEC-TV and Radio in Rochester, where she was responsible for the radio station's billing and for the radio and television stations' cash receipts. In March 1972, she began to work at WAXC(AM) as a bookkeeper/billing supervisor until October 1977. From October 1977 to January 1979, she worked as bookkeeper/officer manager for Radio Station WWWG with responsibility for all accounting functions for that station and for the licensee's co-owned station in Bakersfield, California and its billboard company in New York City. In January 1979, she became business manager of radio stations WEZO/WNYR, Rochester, where she supervised the accounting department and all accounting functions until April 1983. In January 1980, she also became business manager for WUHF-TV, the radio stations' sister station. She remains as business manager of that television station at this time. Her current duties, which will be similar to those she will perform at Victorson's proposed station (except that she does not expect to supervise anyone in the accounting department when Victorson's station first commences operations) are the supervision of the accounting department and all accounting functions, including supervision of all monthly activity, monthly closing of the financial statements, budget analysis, insurance reporting, amortization schedules, cash management, personnel records, collections, preparation for budgets and involvement in strategic planning (Victorson Exh. 5; Eison Exh. 13; Tr. 147-48, 151).

41. McGraw was a founding member of the Rochester Chapter of American Women in Radio and Television in 1981, and served as the Treasurer of the group from 1981 to 1984 (Victorson Exh. 5).

42. Victorson intends to install auxiliary power generators at the studio and transmitter sites to enable the station to maintain its operations in the event of a power outage (Victorson Exh. 6; Tr. 32).

43. *Eison and Associates, Limited.* Eison is a limited partnership formed under the laws of the State of New York (Eison Exh. 1). The general partner of Eison is Carvin Eison and the limited partners are Allen Wheeler and David Webb, Jr. (*Id.*). Mr. Eison holds a 25% partnership equity interest in and possesses 100% voting control of Eison (*Id.*). The limited partners, Messrs. Wheeler and Webb, are passive investors in Eison, each holding a 37.5% partnership equity interest and no power to control the business of the partnership (*Id.*).

44. Eison's Amended Agreement of Limited partnership vests the control and direction of the business and operations of the partnership in the general partner and prohibits the limited partners from exercising control or participating in the control of the business and/or operations of the partnership (Eison Exh. 1, 7 at §§4, 5). Eison's Amended Agreement of Limited Partnership contains all of the provisions for insulation of limited partners delineated by the Commission in its Ownership Attribution Rules, 47 C.F.R. §73.3555 Note 2(g)(2) (Eison Exh. 7 at §5). In addition, Eison has certified to the Commission that no limited partner will be involved in any material respect in the management operation of the proposed Rochester station (Eison Exh. 1).

45. The current ownership and ownership structure of Eison have gone through an evolutionary process. The Eison application was originally filed on September 18, 1987, with Carvin Eison as the sole proprietor (Tr. 234, 490-91). Mr. Eison first learned from Garth Fagan that Channel 290A in Rochester was available for application approximately three weeks prior to the application filing deadline (Tr. 223, 224, 356).

46. During the short time prior to the application filing deadline, Carvin Eison had several discussions regarding this opportunity with Garth Fagan, Linda Chiavaroli and David Rose, who would eventually become the original limited partners of Eison (Tr. 224-26, 230, 343). Garth Fagan is a close friend and business associate of Carvin Eison (Tr. 224-255). Eison had done videotape, production and promotion work for Fagan's dance troupe for many years (Tr. 224-25). Mr. Fagan first learned of the radio station opportunity from Ms. Linda Chiavaroli, a resident of California, who had learned of the opportunity from Michael H. Rosenbloom, who subsequently became Eison's counsel (Tr. 226-230). David Rose is the owner and chief executive officer of Telesis Productions, Inc. (Tr. 230).

47. Prior to the filing of the application, these four individuals agreed in principle to form a limited partnership with each holding 25% of the equity and 25% of the financial obligation, and that Carvin Eison would be the general partner and the other three would be passive limited partners (Tr. 233-34, 237-38, 343, 491-92). Carvin Eison retained Mr. Rosenbloom as Eison's communications counsel and communicated with Mr. Rosenbloom and his firm (Tr. 432). He also retained and communicated with Eison's FCC engineering consultant, Alvin Andrus (Tr. 232, 433). Mr. Eison was solely responsible for and directed all aspects of the preparation and filing of the application. Although it was intended that the applicant entity be owned by Carvin Eison, Garth Fagan, Linda Chiavaroli and David Rose, as a limited partnership, the application was actually filed on September 18, 1987, by Carvin Eison as sole proprietor (Tr. 234, 237-38). Mr. Eison filed in his sole capacity because he and Fagan, Chiavaroli and Rose were unable to finalize all the details of the limited partnership in the short three-week period prior to the filing deadline (Tr. 234, 490-91). At the time of filing, Carvin Eison was unable to certify that the applicant was financially qualified and he so noted on the application (Tr. 235).

48. Subsequent to the filing of the application, two primary tasks needed to be accomplished before the December 31, 1989, B-date; formation of the limited partnership and appropriate financial arrangements so that a certification of financial qualification could properly be made (Tr. 237), 368- 69). During the next three months in connection with the formation of the limited partnership, a limited partnership agreement was negotiated, drafted and executed (Tr. 237, 254-58, 264-65, 378, 380-81, 492-95, 532-33; Victorson Exh. 7). Carvin Eison unsuccessfully looked for an additional general partner to strengthen the application (Tr. 239-40, 377-78, 381, 492); and capital contributions were made (Tr. 232, 257-58, 260-61, 494; Victorson Exh. 7). In connection with arranging financing, Carvin Eison, with assistance of counsel, formulated a construction and operating budget and obtained an equipment proposal (Tr. 206-07, 213-14, 394, 425). Mr. Eison also sought out additional potential investors in the applicant who could assist in financing the proposal (Tr. 241-46, 369-71). The record indicates that Garth Fagan and David Rose also looked for investors and attempted to arrange financing (Tr. 242, 250-51, 369-73). Rose obtained a bank letter, but it was considered unacceptable by Carvin Eison and Eison's counsel (Tr. 242).

49. On the B-date, the original application was amended to reflect the formation of the limited partnership, with Carvin Eison as the sole general partner with a 25% equity interest and with limited partners holding a 75% passive equity interest (Victorson Exh. 7). Since adequate financing arrangements had still not be made, Carvin Eison was unable to certify the applicant financially qualified. Thus, the financial qualification issue was subsequently designated against Eison in the HDO. *See supra*, Part II A1.

50. Following the filing of Eison's B-date amendment, Mr. Eison and his three limited partners, Fagan, Chiavaroli and Rose, continued to search for investors or other means of arranging sufficient financing for the applicant (Tr. 242, 246, 248, 277, 370-74, 382, 384, 433). By the end of 1988, their efforts remained unfruitful and assistance was sought from communications counsel (Tr. 248, 271-72, 279-80, 371). Carvin Eison continued to maintain control over the business and affairs of the partnership, communications with counsel paid partnership bills, handled required publications and periodically informed the limited partners of the progress of the operations of the partnership business in compliance with §4(h) of the Eison limited partnership agreement (Tr. 275, 277, 386-87, 343, 493-95, 520-23; Victorson Exh. 7 §f(h)).

51. At the time the HDO was released, Eison had not yet been able to arrange adequate financing. Faced with a $6,000 hearing fee due by January 27, 1989, and a 30-day time frame within which to secure the requisite financing if the application were to be amended as of right under Section 73.3522(b) of the Commission's Rules, Carvin Eison asked communications counsel Michael Rosenbloom to attempt to secure prospective investors (Tr. 279-80, 282-84, 288, 296-97, 497-98). Shortly before the due date for the $6,000 hearing fee, counsel located two prospective investors -- Messrs. Webb and Wheeler are long-term clients of counsel's firm, have utilized Mr. Rosenbloom's services as a communications attorney in other broadcast station ownership situations, are sophisticated businessmen and have been personal friends and business associates for over 20 years (Tr. 541, 571, 575, 577, 612-14).

52. Based upon instructions from Carvin Eison, counsel provided Messrs. Webb and Wheeler with information regarding the Eison application, including financial information (Tr. 296-97, 497-98, 525, 577-78). Messrs. Webb and Wheeler understood that the limited partners of Eison were unable to continue to finance the prosecution of the applicant, that financing for the construction and initial operation of the proposed station had not been obtained, and that the hearing fee was to be paid to the FCC by January 27, 1989 (Tr. 546, 579-80).

53. Messrs. Webb and Wheeler also knew that Carvin Eison was out of the country and that no final arrangement could be struck until he returned and met with them[5] (Tr. 295, 547-50, 581-82, 584). However, based upon lengthy discussion with Eison's counsel, the strength of their prior association with counsel and his firm, and their trust in counsel's recommendation, Messrs. Webb

and Wheeler agreed to risk $6,000 in exchange for the potential opportunity to replace Eison's existing 75% limited partners (Tr. 288, 293-94, 296, 298, 324, 547-48, 556, 578-79, 583-86).

54. In compliance with instructions from Carvin Eison, counsel and Eison were also in overseas telephone contact throughout the early negotiations with Messrs. Webb and Wheeler (Tr. 292, 298). Mr. Eison agreed that Eison would accept the $6,000 from Webb and Wheeler for the filing fee, but that no arrangement could be finalized unless and until Eison met with Webb and Wheeler and approved of their association with Eison as limited partners (Tr. 293, 295, 298, 324, 525-26). Messrs. Webb and Wheeler then wired communications counsel $6,000 for the filing fee to keep the Eison application going at least until a meeting could be arranged with Carvin Eison upon his return from France (Tr. 298, 325-29, 581-84). Subsequent to influxing the $6,000 to Eison and prior to meeting Carvin Eison, Messrs. Webb and Wheeler also arranged for a $400,000 ear-marked loan to them from the First National Bank in Durant, Oklahoma, for the purpose of construction and initial operation of the prospective Rochester radio station (Tr. 316, 325, 506-07, 559-61; Victorson Exh. 8 at 40). This was done at Mr. Eison's request, which counsel relayed to Webb and Wheeler (Tr. 311).

55. Thereafter, a meeting was scheduled for February 14, 1989, in Dallas, Texas, between Carvin Eison and Messrs. Webb and Wheeler (Tr. 302, 587). Mr. Rosenbloom also attended this meeting, which lasted for four to five hours (Tr. 302, 588). During the course of the meeting, background information on Eison, Webb and Wheeler was exchanged including information regarding their respective existing media interests (Tr. 321-22, 414-15, 428-29, 538, 588-91, 607-08); Carvin Eison agreed to accept Messrs. Webb and Wheeler as substitute limited partners (Tr. 302-03); Webb and Wheeler agreed to replace the original limited partners of Eison (Tr. 304, 545-46); and the terms of the arrangement were negotiated (Tr. 317, 337, 551, 555, 598). In particular, Webb and Wheeler agreed to buy out the original limited partners for an amount equal to their respective capital contributions to date (totalling $6,110) (Tr. 262, 277, 303-04, 326, 495, 545-47, 552-54, 589-90); to pay all outstanding debts of the partnership (Tr. 277, 305, 326, 554-55); to loan up to $400,000 to Eison for the purpose of funding the construction and initial operation of the proposed Rochester radio station (Tr. 307, 505-06, 552-54; Victorson Exh. 8 at 38); to pay 75% of all remaining prosecution costs (Tr. 303-04, 552-54); to personally loan Carvin Eison such funds as he might require to meet his 25% capital contribution obligation to Eison (Tr. 317-20, 504-05, 536, 552-54, 594-95; Victorson Exh. 8 at 38); and to accept repayment of any loans to Eison from his share of the proposed station's proceeds beginning six months after operation and extending over a five-year period thereafter (Tr. 552-54, 595; Victorson Exh. 8 at 38). Carvin Eison amended the Eison application on February 16, 1989, to report that Eison was now financially qualified to construct and operate the proposed station for three months without recourse to revenues, and that Messrs. Webb and Wheeler would replace Eison's original limited partners (Victorson Exh. 8; Tr. 300-02, 310-11, 316-17, 333-37, 418-22, 499-501, 507). An amended Eison limited partnership agreement was then prepared and executed by Messrs. Eison, Wheeler and Webb in March 1989 (Eison Exh. 7; Tr. 338, 509-10, 562-63, 572-73)

56. Neither Eison nor its sole controlling general partner, Carvin Eison, hold directly or indirectly any ownership interest in any licensee or permittee of any television or radio station, in any cable television system, in any daily newspaper, or in any other media of mass communications, with the exception of their interest in the Eison application itself (Eison Exh. 2).

57. Mr. Eison was employed from March 1979 to September 1987 at Station WXXI-TV (PBS), Rochester, New York (Eison Exh. 2). Initially he was employed as a videographer for Station WXXI-TV (*Id.*). Mr. Eison then worked for two years as coordinating producer to obtain grants for program production at the station and to distribute grant money to producers for the creation and production of original programming to be broadcast on WXXI-TV (*Id.*). For the last five years of his employment at Station WXXI-TV he served as a programming producer/director (*Id.*, Tr. 196). Mr. Eison tendered his resignation, effective September 25, 1987, from WXXI-TV (*Id.*). Mr. Eison is no longer affiliated with the station (*Id.*).

58. Thereafter, Mr. Eison was employed by Telesis Productions, Inc., a company engaged in the production of programming for television, which is owned by former Eison limited partner, David Rose (Eison Exh. 2). Mr. Eison resigned from his position at Telesis Productions, Inc. on April 18, 1989 (*Id.*). Also in March or April 1989, Mr. Eison formed a television and motion picture production company under the name Eison Telepictures, Inc. (*Id.*, Tr.357). Mr. Eison is the sole stockholder of this company (Eison Exh. 2; Tr. 346). Mr. Eison will fully withdraw from any employment or business pursuits in the event Eison's application is granted (Eison Exh. 3; Tr. 351). Mr. Eison also testified that if Eison were granted the Rochester FM construction permit, he would withdraw from Eison Telepictures, Inc., and, if necessary, dissolve the business (Tr. 349-52, 364).

59. Allen Wheeler, a passive investor in Eison holding a 37.5% partnership equity interest and no power to control the business of the partnership, is a limited partner with a 10.52% interest in KIFM Broadcasting Limited Partnership, the permittee of Station KIFM(FM), San Diego, California (Eison Exh. 2; Tr. 197, 543-44, 570).

60. David E. Webb, Jr., a passive investor in Eison holds a 37.5% partnership equity interest and no power to control the business of the partnership, had no media ownership interests other than his interest in the instant application until recently (Tr. 607, 611-12).[6]

61. Carvin Eison, the sole controlling general partner of Eison and Associates, Limited, proposes to be integrated into the day-to-day management of Eison's proposed FM broadcast station in Rochester on a full-time basis of at least five days and 40 hours per week if Eison's application is granted (Eison Exh. 3). Mr. Eison will serve as General Manager of the proposed station (Eison Exh. 3). As General Manager, he will oversee the activities of all station departments, determine all station policies, and supervise the day-to-day operations of the entire station, including, but not limited to, the areas of programming, promotion, technical operations, and business affairs (*Id.*). Mr. Eison consistently testified during cross-examination that he was firmly committed to work at the proposed FM

station on a full-time basis as General Manager and would withdraw from any and all other business pursuits to fulfill his commitment (Tr. 348-53, 363-66, 428).

62. Mr. Eison is a Black male and a citizen of the United States (Eison Exh. 4). He has resided in Rochester, New York, on a permanent, full-time basis since 1975 (*Id.*). If Eison is successful in this proceeding and is granted a construction permit, he will remain a full-time, permanent resident of Rochester (*Id.*).

63. Since 1976, Mr. Eison has been the videographer for Garth Fagan's Bucket Dance, an internationally renowned dance troupe based in Rochester (*Id.*). His responsibilities include the production of promotional material for radio and television and the operation of electronic field production equipment (*Id.*, Tr. 366-67).

64. From March 1979 to September 1987, he was employed at Station WXXI-TV (PBS), Rochester, New York (Eison Exh. 4). During his last five years at WXXI-TV, he was a programming producer/director (Eison Exh. 4; Tr. 198).

65. From October 1987 to April 1989, Mr. Eison was a producer and director at Telesis Productions, Inc., a company engaged in the production of programming for television (Eison Exh. 4).

66. In the Spring of 1989, Mr. Eison formed his own production company, Eison Telepictures International, Inc., located in Rochester, New York (Eison Exh. 2; Tr. 346-47, 357).

67. Between 1975 and 1978 Carvin Eison donated time, *i.e.*, teaching class three times a week, to the "All of Us" arts workshop, an organization funded in part by the City of Rochester, to teach photography and video production. Since 1976 until the present, Mr. Eison has, on occasion, donated his services as videographer and archivist for the Garth Fagan Bucket Dance, a dance troupe based in Rochester. Between 1983 and 1987, Carvin Eison attended Career Day at various local high schools to assist and advise students considering television and independent video production careers; in 1984 he received a certificate in appreciation for his conducting a workshop on careers in communications for the students of the Rochester Educational Opportunity Center. In 1986, he donated his services to produce a videotape to support and promote the activities of the Association of Black Communicators, an organization whose purpose is to further the aspirations of Black communications professionals in the Rochester area (Eison Exh. 4).

68. *Auxiliary Power.* Eison proposes to install auxiliary power equipment at both its studio and its transmitter in order to keep the station on the air in the event of a local power failure (Eison Exh. 5; Tr. 206-20).

69. *R. B. Lee Rust.* R.B. Lee Rust is an individual applicant, operating as a sole proprietor, for the Rochester FM frequency (Rust Exh. 1).

70. R.B. Lee Rust intends to work full-time (a minimum of 40 hours per week) as General Manager of the proposed station and will be responsible for hiring and supervising all department heads and key employees, development, determination, and implementation of all station policies, and compliance with all Commission policies and regulations. Rust will withdraw from all other business, employment or other activities which would interfere with his integration commitment.

71. Rust is 38 years of age, married, and the father of two children. He attended the University of Rochester (September 1969-June 1971) and the University of Wisconsin-Madison (September 1971-June 1973); he received a Bachelor of Arts Degree with a major in journalism/mass communications. Rust also holds a general radio/telephone operator's license. Since graduation from college in 1973, Rust has been principally employed in radio broadcasting. He currently is employed part-time as Program Coordinator/Operations Manager of noncommercial educational (public) Broadcast Station WGMC(FM), Greece, New York and as an announcer/programmer for commercial Broadcast Station WRMM-FM, Rochester New York. In 1982, he established Signal Mountain Productions and continues to own and operate that company on a part-time basis; Signal Mountain Productions provides music recording and audio/visual production services as well as record and tape distribution services (Rust Exh. 1; Tr. 626-33).

72. From 1983 until the present, Rust has resided within the 1.0 mV/m service area of the proposed station and currently resides in Webster, New York. During 1969-71, while he was a student attending the University of Rochester, he resided in Rochester, New York. From 1962-65, he resided with his parents in Pittsford, New York, a suburb of Rochester (Rust Exh. 1; Tr. 629).

73. Rust has extensive radio broadcast experience. Following is a listing of his broadcast positions, duties, and dates of employment:

WRUR-FM Rochester, NY	11/69-5/71	Student programmer
WRNL-AM Richmond, VA	6/73-8/74	Announcer programmer overnight Jazz/Album Rock show; audio/ radio technician
Rust Communications Group, Inc.	4/75-6/77	Programmer/Producer for automated music tape service used by 5 group FM stations. Adult Contemporary/ Album Rock formats
WRXL-FM Richmond, VA	7/75-5/79	Program Director for Album Rock format; staff announcer; programmer for weekly Jazz show
WRNL-AM, WRXL-FM Richmond, VA	10/79-1/80	Acting Chief engineer 5 kw directional AM, 140 kw FM
WEER-FM Warrenton, VA	8/80-1/82	Announcer, programmer for Album Rock, Jazz, Folk formatted station
Rust Communications Group, Inc.	9/81-5/82	Group Programming Supervisor for Country, Adult Contemporary, Contemporary Hits formatted stations
WHAM-AM Rochester, NY	9/83-3/85	Operations Director
WHFM-FM Rochester, NY	8/84-3/85	Music Director, Contemporary/Classic Hits format
WGMC-FM Greece, NY	10/86-present	Announcer, programmer
WKLX-FM Rochester, NY	3/87-11/87	Announcer/Programmer "The Jazz Show"
WGMC-FM Greece, NY	7/88-present	Operations coordinator and technician
WRMM-FM Rochester, NY	9/89-present	Announcer/Programmer "Rochester's Jazz Life"

(Rust Exh. 1).

74. From 1987 until the present, Lee Rust has been a volunteer programmer for Public Radio Station WGMC(FM), Greece, New York, and has performed volunteer (unpaid) work in the range of approximately three-four hours per week at the station. Rust is a member (1986-present) of the Pyramid Arts Center, a community experimental performing and graphic arts organization located in Rochester, New York, and donated his services to the Amnesty International Concert, which occurred at the Pyramid Arts Center (Rust Exh. 1; Tr. 624-628).

75. Rust proposes to install auxiliary power generating equipment at the transmitter and studio sites to assure continuous service in the event of a commercial power failure (Rust Exh. 2).

76. *Taylor Communications of Rochester, Inc.* Taylor is a corporation organization under the laws of the Commonwealth of Massachusetts (Taylor Exh. 1). Its mailing address is Golden Bear Plaza, 11760 U.S. Highway 1, Suite 303, North Palm Beach, Florida 33408 (*Id.*). John J. Taylor III owns 36.2% of the voting stock, and serves as President, Treasurer, and a Director of the applicant (*Id.*). Lillian M. Taylor owns 12.8% of the voting stock, and serves as Clerk and a Director of the applicant (*Id.*). Henri J. DesPlaines does not have any ownership in the applicant, but serves as the Executive Vice President (*Id.*).

77. *Integration.* The principals of Taylor do not propose to be integrated in the operations of the proposed station on a day-to-day basis (Taylor Exh. 2).

78. *Diversification.* John J. Taylor, Jr., Lillian M. Taylor and John J. Taylor III own 51%, 12.8%, and 38.2%, respectively, of J.J. Taylor Companies, Inc. (Taylor Exh. 4). John J. Taylor, Jr. is Chief Executive Officer, Chairman of the Board and a Director (*Id.*). Lillian M. Taylor is Clerk and a Director (*Id.*). John J. Taylor III is President, Treasurer, Chief Operating Officer, and Director (*Id.*). Henri J. DesPlaines is Executive Vice President and Chief Financial Officer (*Id.*). J.J. Taylor Companies, Inc. is the licensee of WCOD(FM), Hyannis, Massachusetts, WTHT(FM), Portland, Maine, WEAT(AM) and WEAT-FM, West Palm Beach, Florida, and WIVY(FM), Jacksonville, Florida (*Id.*). J.J. Taylor Companies, Inc. has entered into agreements to sell station WTHT(FM) to Fuller-Jeffrey Broadcasting Corporation of the Great State of Maine and to acquire station WHLY(FM), Leesburg, Florida, from General Broadcasting of Florida, Inc. (*Id.*).

79. John J. Taylor, Jr., Lillian M. Taylor, and John J. Taylor III own stock in Taylor Communications of Syracuse, Inc., an applicant for a permit to construct a new FM station on Channel 290A, Syracuse, New York (*Id.*). John J. Taylor, Jr. is 51% percent shareholder, Clerk, and a Director (*Id.*). John J. Taylor III is a 36.2% shareholder, President, Treasurer, and a Director (*Id.*). Henri J. DesPlaines is Executive Vice President (*Id.*).

80. *Auxiliary Power.* Taylor proposes to install auxiliary power generating equipment at both the studio and transmitter sites to ensure continued operation in the event of a power outage (Taylor Exh. 4).

81. *Christian Discerner, Inc.* Discerner is a non-profit tax-exempt organization. James L. Oyster is the sole officer and director of the corporation (Discerner Exh. 1).

82. James Oyster intends to work full-time (a minimum of 40 hours per week) as general manager of the proposed station and will be responsible for the day-to-day operation of the station. Mr. Oyster is a graduate of Duke University (B.A. 1969) and holds law degrees from American University (J.D. 1972) and George Washington University (L.L.M. 1976). Mr. Oyster has been engaged in the practice of communications law since 1974 and as a sole practitioner since 1985 (Discerner Exh. 1). Oyster currently devotes 30 hours per week on the average to the practice of communications law; his law practice is the sole source of income to support his wife and four children. If Discerner's application is granted, Oyster intends to reside in Rochester and to continue to practice communications law from Rochester, but to limit his time to that endeavor to no more than 10 hours per week (Tr. 638-41).

83. Discerner's sole principal, James L. Oyster, is President and sole owner of Salt of the Earth Broadcasting, Inc., the general partner of Salt of the Earth Broadcasting, Limited, permittee of WSNR-TV, Syracuse, New York. If Discerner's application is granted, Mr. Oyster will divest himself of all other cognizable media interests (Discerner Exh. 1).

84. Mr. Oyster will divest himself of all other cognizable media interests should Discerner be awarded the permit in the comparative hearing. Mr. Oyster is presently president and sole owner of Salt of the Earth Broadcasting, Inc., general partner of Salt of the Earth Broadcasting, Ltd., permittee of WSNR-TV, Syracuse, New York (Channel 43) (Discerner Exh. 1).

85. *Best Broadcasting Company, L. P.* Best is a New York limited partnership whose sole general partner is Wyoma Best. Ms. Best holds 20.1% equity interest in the partnership. The limited partners are Vincent Henry (39.9% equity), Ibero American Investors Corp. (20% equity interest) and Julio Vasquez (20% equity) (Best Exh. 1).

86. Best Exh. 1 at 1. Ibero American Investors Corp. is a Minority Small Business Investment Company ("MSBIC"), which is wholly-owned by Ibero American Action League, a tax exempt, nonprofit social service organization (*Id.*).

87. At the time of the filing of Best's application, Vincent Henry was the sole limited partner with a 79.9% limited partnership interest. Best's limited partnership agreement was amended effective July 21, 1989 to reflect the ownership structure described above (Tr. 937; Eison Exh. 22).

88. Wyoma Best, Best's sole general partner, will work at Best's proposed station as general manager on a full-time basis (at least 40 hours per week) (Best Exh. 3 at 1). As general manager, Ms. Best will have ultimate responsibility for all management, administrative, budgetary and programming decisions relating to the operation of the station (*Id.*).

89. Ms. Best is currently employed full-time as the Vice President for Communications, of the Rochester Chamber of Commerce. In the event that Best's application is granted, Ms. Best will resign her employment with the Chamber of Commerce (or any other full-time employment position that she may hold at that time), to fulfill her integration commitment (*Id.*).

90. Ms. Best resided continuously in Rochester, New York, from June, 1965 until February 7, 1989, at which time she moved to her current residence in Victor, New York (Best Exh. 3 at 1). Ms. Best's current residence in Victor, New York is within the 1 mV/m contour of Best's proposed station (*Id.*; Tr. 1035).

91. Ms. Best is a Black woman (Best Exh. 3 at 1).

92. Wyoma Best's civic activities are extensive and include the following: Urban League of Rochester (member, 1969-present and board member, 1985-present); Citizens Commission for Quality Education 1969); Rochester Board of Education (1970-71); Rochester City Charter Commission (member and committee head, 1972-73); Monroe County Human Relations Commission (1973-77); United Way of Rochester (board member, 1977-present); Commission on Quality Education (1980-82); Ibero American Investors Corporation, a MSBIC owned by a non-profit Hispanic civil rights organization, Ibero American Action League (board member and committee chair, 1981-present); Rochester Riverside Convention Center (board member, 1984-present); Martin Luther King Commission (1986-present); and Rochester Brainpower Advisory Board (1987-present). In 1980, Ms. Best received a major achievement award from the Monroe County Human Relations Commission for her work in connection with that organization (Best Exh. 3).

93. Wyoma Best was employed at Station WHEC-TV, Rochester, New York, from March 1972 through December 1979 where she performed duties of a reporter, moderator and news anchor (Best Exh. 3).

94. Best holds no attributable interests in a medium of mass communications (Best Exh. 2 at 1). Wyoma Best, Best's sole general partner, has served since 1982 as a member of the Board of Directors of Greater Rochester Cable, Inc. ("GRCI"), which operates a residential cable television system serving the city of Rochester, New York (*Id.*). Ms. Best owns no stock in GRCI and is neither an officer or employee of GRCI; her exclusive role is that of an outside director. Ms. Best pledges to resign as a director of GRCI in the event that Best's application is granted (Best Exh. 2 at 1).[7]

95. *Auxiliary Power.* Best proposes to install auxiliary generators at the studio and transmitter sites (Best Exh. 4).

Conclusions of Law
Basic Qualifying Issues

Financial Qualification Issue - Eison and Associates

96. Eison's initial written budget included $100,000 for estimated preoperational legal and FCC filing fees,$81,000 for preoperational construction, equipment and installation costs and $79,250 for three months operation without recourse to revenues, for a total budget of $360,250. To meet these costs Eison relied on a loan from Messrs. Webb and Wheeler in the amount of up to $400,000. The requisite reasonable assurance of the availability of these funds to Webb and Wheeler was provided by a letter from the First National Bank of Durant, Oklahoma. Messrs. Webb and Wheeler also agreed to loan Carvin Eison sufficient funds as needed to make his own capital contributions.

97. Subsequently, Eison revised and increased its budget estimates which included $130,000 for preoperational legal and FCC fees, $201,000 for preoperational engineering, equipment, installation and construction costs and $110,500 for the first three months operating costs, for a total estimated budget of $441,500. To meet prosecution and pre-grant costs, Eison is relying on capital contributions made by its partners ($100,781 as of September 8, 1989), and a $200,000 line of credit made available to limited partners Webb and Wheeler from the First National Bank in Durant, Oklahoma. To meet its construction and initial operating expenses of $311,500, Eison is relying on a $400,000 loan from First National Bank in Durant, Oklahoma. The general and limited partners have complied with the bank's request to confirm their willingness to personally guarantee and collateralize the 400,000 loan from the bank.

98. In light of the foregoing, it is ruled that Eison has the reasonable assurance that sufficient funds are available from committed sources to prosecute its application and to construction and operate its proposed facilities for three months without revenue. *See e.g., Northampton Media Associates*, 4 FCC Rcd. 5517 (1989). Accordingly, the financial qualification issue designated with respect to Eison in the HDO IS RESOLVED in its favor.

Financial Qualification and Financial Certification Misrepresentation Issues - Best Broadcasting Company, L. P.

99. Commission precedent holds that in order to prove reasonable assurance of financial qualifications at the time of certification, the applicant must adduce probative evidence that, prior to certification, it engaged in serious and reasonable efforts to ascertain predictable construction and operation costs. And to establish the availability of funds to meet these estimated expenses, the applicant must provide substantial and reliable evidence showing sufficient net liquid assets on hand, or committed sources of funds to construct and operate for three months without revenue. *See, Northampton Media Associates*, (*supra.*)

100. There is no evidence in the record that indicates that Wyoma Best ever prepared a budget or estimate of financial requirements necessary to construct and operate the proposed facilities for three months without revenue. Wyoma Best did receive an oral estimate from communications counsel of 30,000 for pre-grant litigation costs through the Initial Decision. However, there is no record evidence of how a 300,000 estimate for construction costs was arrived at. There is also no evidence regarding estimates of operating costs.

101. Additionally, not only did Wyoma Best fail to establish a basis for projected pre and post grant cost estimates, she also failed to secure reasonable assurance of sufficient funds available to meet the projected costs. She relied on receiving a loan from Ragan Henry, but his September 15, 1987 letter to her only offered to fund construction costs. No mention was made of pre-grant or operational costs. Additionally, Best did not establish that Ragan Henry as an individual (*i.e.*, not a banking institution) was financially capable of making the loan. Furthermore, Ragan Henry's requirement of personal guarantees from the Best partner's was not complied with at the time of the certification.

102. Finally, although pre-grant costs were to be met by Vincent Henry and Wyoma Best, neither supplied financial statements as to their respective wherewithal to fund pre-grant expenses.

103. In light of the foregoing, it is ruled that at the time Wyoma Best certified to the Commission that Best was financially qualified, she did not possess the reasonable assurance of the availability of sufficient funds for the prosecution of the application and for the construction and initial operation of the station and that she knowingly misrepresented to the Commission that she had such rea-

sonable assurance. Accordingly, Best Broadcasting Company, L.P. (File No. BPH-870918NN) IS DISQUALIFIED for filing a false financial certification.

104. The record shows that Best is also presently financially unqualified. There still is no record proof of any basis for Best's cost estimates. Secondly, although Wyoma Best received a second letter from Ragan Henry which now included a reference to operational costs, the letter did not specify the repayment terms of the proposed loan. The personal guarantees of Best's partners were never supplied to Ragan Henry as requested in his commitment letter. Although Ragan Henry supplied his financial statements for the hearing, almost all of the financial information was redacted rendering them meaningless.

105. Based on the record evidence, Best failed to carry its burdens of proof and proceeding with the evidence with respect to the financial certification issue. It is concluded that Best does not have the reasonable assurance of sufficient funds readily available for prosecution, construction or initial operation of the proposed station and IS HEREBY DISQUALIFIED.

Standard Comparative Issue

106. All of the applicants except Best have been found basically qualified. Since Best has failed to meet basic qualifying issues, its application is denied, and Best is not entitled to comparative consideration.

Diversification

107. Victorson, Eison, Rust, Christian Discerner have no media interests cognizable under the diversification criteria. Accordingly no comparative demerit is incurred by any of them under the diversification criterion.

108. Taylor's principals own four radio stations which are located in Massachusetts, Maine and Florida. Since all of Taylor's attributable broadcast interests are in out-of-state areas and distant from Rochester, New York, Taylor will be assessed a slight to moderate diversification demerit. *See Hispanic Owners, Inc.*, 99 FCC 2d 1180, 57 RR 2d 695 (Rev. Bd. 1985).

Integration

109. *Victorson*. Victorson is entitled to 100% integration credit for the full-time participation of its principals Scott Gudell (57.2% of the voting stock), Jerdine Johnson (21.4% voting control) and Kathleen McGraw (21.4% voting control). Each will hold a position enumerated by the Commission as managerial. *See Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 5 RR 1901 (1965). There is no record evidence of any impediment that would hinder any of Victorson's integrated principals from performing their respective outlined tasks. Gudell's participation is enhanced by his lifelong local residency, broadcast experience and civic involvement. Johnson's participation is enhanced by her local residency, civic participation, and her female and minority status. McGraw's participation is enhanced by her local residency, civic involvement, female status and broadcast experience.

110. *Eison*. Eison will be credited with 100% full-time integration for the participation of its general partner Carvin Eison. The competing applicants complain of alleged irregularities in the operation of Eison which they believe compromise Eison's integration proposal but those arguments are rejected. The record clearly shows that Mr. Eison actively participated in all phases of the prosecution of the application and that he was the sole principal who ever managed and controlled the applicant. The record also shows that none of Eison's limited partners either in the pre-formation stage or in the pre-organizational stage ever intended to participate in management or exercise any degree of control. The actions done by the limited partners in seeking or securing financial funding are perfectly permissible under Commission policy and precedent. *Ownership Attribution Reconsideration Order*, 58 RR 2d 604; *Cuban - American Limited*, 2 FCC Rcd 3264 (Rev. Bd. 1987). The contacts that Mr. Eison had with Eison's limited partners did not compromise Mr. Eison's total control of the applicant or the process of the application. The business arrangements between Mr. Eison and Messrs. Webb and Wheeler were properly and timely concluded prior to the Eison February 16, 1989 Amendment. All of the reporting and disclosures made by Eison were timely filed. Finally, the record shows no impediment to Mr. Eison being able to carry out his full-time integration pledge. Mr. Eison has testified that he will withdraw from his present business.

111. Mr. Eison's proposed integration is enhanced by his local residence, minority status, civic involvement and broadcast experience.

112. *R. B. Lee Rust*. Rust will be credited with 100% full-time integration credit the participation of its sole principal as general manager. Mr. Rust's proposed integration is enhanced by his local residence, civic participation and broadcast experience.

113. *Taylor*. Taylor does not seek any quantitative integration credit, nor is it entitled to any residual qualitative enhancement credit.

114. *Christian Discerner*. Discerner will be credited with the 100% full-time integration credit for the participation of James Oyster as general manager of the proposed station. Mr. Oyster had promised that he would withdraw from the practice of law completely if required in order to meet the integration commitment. There is no record evidence that would cast doubt on Mr. Oyster's ability or intent to effectuate his integration pledge. Mr. Oyster's integration proposal is enhanced for his proposed future local residency.

Auxiliary Power

115. All applicants have proposed auxiliary power facilities at both the studio and transmitter site and each is entitled to a slight preference for proposing auxiliary power facilities.

Ultimate Conclusions

116. Victorson, Eison, Rust and Discerner merit full-time quantitative integration credit. Taylor with no integration proposed is eliminated. Best has been disqualified. Discerner's integration proposal only is enhanced by Mr. Oyster's promise of future local residence, and in light of the remaining applicants' stronger enhancement credits it too must be eliminated. As between Eison and Rust, Eison's proposal is preferred because Eison bests Rust by virtue of its minority status credit and greater local residence credit. As between Eison and Victorson, Eison is the winner because it receives greater credit for minority status (100% vs. 21.4%), and broadcast experience (100% vs. 78.6%). Victorson gets greater fe-

male status credit (42.8% vs. 0%), but this does not outweigh Eison's minority status credit advantage. Minority enhancement is equivalent to local residence. *See Radio Jonesboro, Inc.*, 100 FCC 2d 941, 945, 57 RR 2d 1564 (1985). *See* also, *Religious Broadcasting Network*, 3 FCC Rcd 4085, 4101, 65 RR 2d 56 (Rev. Bd. 1988). Additionally, Mr. Eison's civic participation credit is of greater weight than Mr. Gudell's.

Accordingly, IT IS ORDERED that unless an appeal from this Initial Decision is taken by a party, or the Commission reviews the decision on its own motion in accordance with Section 1.276 of the Rules, the application of Eison and Associates, Limited (File No. BPH-870918MJ) for a construction permit for a new FM station on Channel 290A at Rochester, New York IS GRANTED, and the applications of Victorson Group, Inc. (File No. BPH-870918MF), R.B. Lee Rust (File No. BPH-870918MQ), Taylor Communications of Rochester (File No. BPH-870918NE), and Christian Discerner, Inc. (File No. BPH-870918NB) ARE DENIED [8]

FEDERAL COMMUNICATIONS COMMISSION

John M. Frysiak
Administrative Law Judge

FOOTNOTES

[1] Eight other applications were dismissed as follows: Donna B. Crawford (at request of applicant), *Order*, FCC 89M-4841, released February 13, 1989; Community Broadcasting Foundation, Inc., Rochester Broadcasting Corporation, Agape Radio, Inc. and Dolores Boyd, d/b/a Lake Broadcasting, Inc. (failure to prosecute), *Order*, FCC 89M-504, released February 15, 1989; Knight Radio, Inc. (at request of applicant), *Order*, FCC 89M-1405, released May 10, 1989; Upstate FM Limited Partnership (failure to prosecute, *Order*, FCC 89M-2380, released September 29, 1989; and SpaceCom, Inc. (at request of applicant), *Order*, FCC 89M-2383, released October 2, 1989.

[2] Eison's September 11, 1989 amendment contained a statement describing the upward revisions in the budgetary information and explaining that the upward revisions were made in light of the availability of significant financing to Eison through the financial assistance of limited partners Webb and Wheeler and do not reflect any lack of support for Eison's earlier cost estimates. The increase in the projected financial requirements from the original December 1987, budget estimate of $360,250 to the upwardly revised September 1989 budget of $441,500 includes increases in estimated pregrant legal expenses and preoperational miscellaneous contingency expenses; and increases in initial three months operational expenses for music licensing, for payroll for sales, general and administrative employees, for transmitter building rent, and for miscellaneous contingency expenses (*See also* Tr. 391-94. 435-43, 530).

[3] Ragan Henry is not a party to the Best application. He is the father of Vincent A. Henry, a limited partner in Best who originally held a 79.9% limited partnership interest in the applicant, which was later reduced to 39.9% (Best Ex. 1; Tr. 758, 828-29; 979-80). Ragan Henry requires members of his family to be equity owners in applicants before he will provide the applicant with a financing letter (Tr. 763-68).

[4] A draft limited partnership agreement was sent by Ragan Henry to Best's local counsel, James Locke. *See Order*, FCC 89M-1666, released June 14, 1989 (Tr. 1025).

[5] Mr. Eison was in France during the latter part of January 1989. Although he understood from counsel that this was an inopportune time to travel overseas (with the vital hearing deadline approaching at the Commission), it was imperative that he make the trip for personal reasons (Tr. 284-65, 292, 496-97, 524-26).

[6] On October 30, 1989, an application to assign the license of Station KBIX(AM), Muskogee, Oklahoma and the construction permit for Station KBIX(FM), Wagoner, Oklahoma, from Embody Broadcasting Company to BIX Broadcasting Company was filed with the Commission. *See* File Nos. BAL-891030EB and BAPH-891030EC. David E. Webb, Jr. is the sole shareholder, the Chief Executive Officer and President of BIX Broadcasting Company.

[7] Ms. Best's divestiture commitment was reported in BBC's application as originally filed. *See* Application of Best Broadcasting Company, L.P., File No. BPH-870918NN, Exhibit No. 1).

[8] In the event exceptions are not filed within 30 days after the release of this Initial Decision and the Commission does not review the case on its own motion, this Initial Decision shall become effective 50 days after its public release pursuant to Rule 1.276(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-83

In re Applications of

WEBSTER-FULLER COMMUNICATIONS ASSOCIATES
Webster, New York

File No. BPH-870312MJ

For a Construction Permit for a
New FM Station on Channel 274A
in Webster, New York

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 1990; **Released: July 16, 1990**

By the Commission:

1. Webster-Fuller Communications Associates (WFCA) is the sole remaining applicant in what was originally a ten-applicant comparative proceeding. By its action of May 31, 1989, the Commission approved a settlement agreement and remanded the proceeding for an evidentiary hearing on financial qualification and certification issues previously specified against WFCA.[1] In an Initial Decision, released on May 15, 1990, Administrative Law Judge Walter C. Miller resolved both issues in WFCA's favor and granted its above-captioned application for a new FM station on Channel 274A in Webster, New York.[2] In doing so, the ALJ faulted the Mass Media Bureau for "display[ing] a curious neutrality in favor of WFCA," [3] concluded that "the remanded hearing was conducted at something less than arms-length,"[4] and cautioned that "WFCA's basic qualifying issues were [not] thoroughly and vigorously tested."[5] The ALJ further suggested that WFCA may be a "sham" applicant with the 75 percent limited partner "call[ing] all the shots" and "hid[ing] behind the facade of a 24% [sic] equity female general partner."[6]

2. Section 309 of the Communications Act specifies that an application will be granted only "if the Commission... find[s] that the public interest, convenience, and necessity w[ill] be served." To eliminate any ambiguity as to whether such an affirmative public interest finding may be made with respect to WFCA's application, we have reviewed the record in this case on our own initiative, pursuant to 47 C.F.R. § 1.276(b) of the Commission's rules.[7] Based upon that review, we find that WFCA is fully qualified to be a Commission licensee, and that the grant of its application serves the public interest. We further find that, in accordance with the Commission's remand order suggesting that the Mass Media Bureau "make an independent evaluation of the questions raised concerning Webster-Fuller's qualifications and express its views to the ALJ,"[8] the Bureau has acted in an entirely proper manner. We are satisfied that the Bureau faithfully and vigorously participated in the remand proceeding in a fair and impartial manner, and that the record compiled on the financial qualifications and financial certification issues is sufficient to support the grant of WFCA's application.

3. Finally, we have carefully reviewed the record to determine whether there is a material question of fact as to whether WFCA is a "sham" limited partnership under the control of the 75 percent limited partner, George Kimble. Because we find no evidence that either George Kimble or former limited partner David Mance[9] was materially involved in the business of the partnership after the execution of the partnership agreement providing that Donna Fuller would be WFCA's only general partner,[10] we need not determine what action would be appropriate if the record raised a substantial and material question of fact concerning the *bona fides* of the only remaining applicant's proposal.[11]

4. ACCORDINGLY, IT IS ORDERED, That, pursuant to 47 C.F.R. § 1.276(b) of the Commission's rules, the record in MM Docket No. 88-83 HAS BEEN REVIEWED by the Commission; that *Webster - Fuller Communications Associates*, 5 FCC Rcd 3025 (ALJ 1990), IS MODIFIED to the extent reflected herein; and that the application filed by Webster-Fuller Communications Associates (File No. BPH-870312MJ) IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] *Webster-Fuller Communications Associates*, 4 FCC Rcd 4952, 4954 ¶¶ 14, 18 (1989).

[2] *Webster-Fuller Communications Associates*, 5 FCC Rcd 3025 (ALJ 1990).

[3] *Id.* at 3025 ¶ 11.

[4] *Id.* at 3026 ¶ 15.

[5] *Id.* at ¶ 16.

[6] *Id.* at 3028 note 16.

[7] Section 1.276(a) of the Rules gives parties 30 days following public release of the initial decision within which to file exceptions to that decision. If no exceptions are filed, the initial decision becomes final 50 days after its public release unless the Commission "on its own initiative provide[s], by order adopted not later than 20 days after the time for filing exceptions expires, that an initial decision shall not become final, and that it shall be further reviewed or considered by the Commission." Section 1.276(a). No exceptions to the initial decision were received by June 15, 1990, the deadline for filing exceptions in this case.

[8] *Webster-Fuller Communications Associates*, 4 FCC Rcd at 4953 ¶ 12.

[9] We do not share the ALJ's concern that the post-settlement amendment reporting Mance's withdrawal from WFCA "significantly altered WFCA's ownership and financial structure." 5 FCC Rcd at 3025 ¶ 12. Prior to the amendment, Mance and Kimble, who had agreed to share financing of the applicant, each held 37.5 percent equity in WFCA. Thus, by acquiring

Mance's interest, Kimble became the sole limited partner (75 percent equity), with full responsibility for financing WFCA. But Mance's departure did not affect Donna Fuller, who remained the only general partner with a 25 percent equity interest. Moreover, the record reflects that Fuller continued to have ultimate decisionmaking authority after the settlement mooted the comparative issue. For example, both Kimble and Fuller testified that she made the post-settlement decision to change transmitter sites. (Tr. 314, 179).

[10] *See Coast TV*, 5 FCC Rcd 2751, 2753 ¶ 16 (1990), in which the Commission held that "where an owner has assumed an active role *after the applicant has declared that that owner will be passive*, that owner's equity interest will be attributed to the applicant for integration purposes regardless of the nature of the 'passive' owner's involvement" (emphasis added).

[11] To the extent that the ALJ suggests the Commission would take no action under these circumstances because the comparative issue has been mooted by a settlement agreement, we have adopted a Notice of Proposed Rule Making inviting comments on the suggestion that we reverse the *Ruarch* policy. (*Ruarch* holds that "settlements extinguish the continuing validity of integration, as well as divestiture commitments that had been made during the comparative hearing process.") *See Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases*, FCC 90-194 at ¶ 15 (released June 26, 1990). Our action herein reviewing the record on our own initiative is not intended to prejudge that inquiry in any way.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Deletion of Part 99 of the
Rules Governing the Disaster
Communications Service.

ORDER

Adopted: July 9, 1990; Released: July 17, 1990

By the Commission:

1. On November 27, 1981, the Commission amended the private land mobile services rules to provide a frequency allocation and assignment system permitting the States, Territories, and Possessions of the United States to meet regional and State disaster communications needs. In the same proceeding, disaster communications systems licensed pursuant to Part 99 of the Commission's Rules, 47 C.F.R. Part 99, were grandfathered for an indefinite period of time, with no new applications for licenses under Part 99 being accepted after August 15, 1981.[1]

2. In 1981, there were nine licensees who held licenses in the Disaster Communications Service, Part 99. Because no new licenses could be issued in that service, and as a result of the attrition of the existing licenses, the last remaining license was deleted from the license data base in January of 1988.

3. The notice and public comment procedure required by the Administrative Procedure Act is unnecessary in this proceeding because the deletion of Part 99 is a minor, non-controversial amendment.[2] As noted above, there have been no stations licensed under Part 99 since January 1988.

4. In view of the foregoing, Part 99 should be deleted from the Commission's Rules. The attached Appendix achieves that objective.

5. IT IS THEREFORE ORDERED, pursuant to the authority contained in 47 U.S.C. §§ 154(i) and 303(r), that Part 99 of the Commission Rules, 47 C.F.R. Part 99, IS DELETED.

6. IT IS FURTHER ORDERED that this rule amendment shall become effective **September 4, 1990.**

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 99 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 99 -- Disaster Communications Service is removed in its entirety.

FOOTNOTES

[1] 87 FCC 2d 1042 (1981).

[2] *See* 5 U.S.C. § 553(b)(B).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-329

In re Applications of

ARTHUR ANDREW MOBLEY (hereafter "Mobley") File No. BPH-880728MZ

DESERT WEST AIR RANCHERS CORPORATION (hereafter "Ranchers") File No. BPH-880728NE

For Construction Permit for a
New FM Station in Buckeye, Arizona
Channel 295A (106.9 MHz)

HEARING DESIGNATION ORDER

Adopted: June 28, 1990; Released: July 17, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Mobley*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Mobley would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

3. *Ranchers*. Ranchers petitioned for leave to amend its application on February 16, 1989 and March 29, 1990. The accompanying amendments were filed after December 19, 1988, the last day for filing amendments as of right. The subject amendments were accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendments are accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

4. Data submitted by the applicants indicate there would be significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by the Mobley would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

7. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Ranchers ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

8. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

9. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

10. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-330

In re Applications of

S. KENT LANKFORD (hereafter "Lankford") — File No. BPH-880727MI

JASPER BROADCASTING COMPANY (hereafter "Jasper") — File No. BPH-880728MP

For Construction Permit for a New FM Station on Channel 278A in Newton, Illinois

HEARING DESIGNATION ORDER

Adopted: June 28, 1990; Released: July 17, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters*. On March 20, 1990, Jasper filed a petition to dismiss or deny the Lankford application. Jasper asserts that Lankford does not have reasonable assurance of the availability of his proposed transmitter site. We hold that Jasper's petition to dismiss or deny is essentially a petition to specify issues before designation. Since the Commission's *Report and Order* in re *Revised Procedures for the Processing of Contested Broadcasting Applications;* Amendments of Part 1 of the Commission's Rules, 72 FCC 2d 202, 45 RR 2d 1220 (1979) directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in this petition have not been considered. Accordingly, an opportunity to raise any allegations contained therein will be afforded the petitioner post-designation pursuant to 47 C.F.R. Section 1.229.

3. On March 5, 1990, the Commission released a *Report and Order* in MM Docket No. 89-480 to amend the FM *Table of Allotments*. This *Report and Order*, which became effective on April 19, 1990, changes the allocation for Newton, Illinois, from Channel 295A to Channel 278A. Consequently, the applications in this proceeding are required to amend their proposals to the new channel. To date, no such amendments have been received. Accordingly, each of the applicants in this proceeding will be required to submit a post-designation amendment to specify the new allocation, to the presiding Administrative Law Judge.

4. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

6. IT IS FURTHER ORDERED, That the petition to dismiss or deny filed by Jasper IS DISMISSED.

7. IT IS FURTHER ORDERED, That the applicants in this proceeding shall submit an amendment as required by MM Docket 89-480, to the presiding Administrative Law Judge within 30 days after this Order is released.

8. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

9. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

10. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-328

In re Applications of

PYRAMID BROADCASTING, INC. (hereafter "Pyramid") File No. BPH-880915MY

P&B COMMUNICATIONS, INC. (hereafter "P&B") File No. BPH-880915NP

For Construction Permit for a New FM Station on Channel 273A in Whitehall, Michigan

HEARING DESIGNATION ORDER

Adopted: June 28, 1990; Released: July 17, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. In the *Notice of Proposed Rule Making* (NPRM) in MM Docket 89-579, 4 FCC Rcd 8709 (1989), the Commission proposed to add Channel 273C3 for Channel 272A at Big Rapids, Michigan. The *NPRM* also proposes to substitute Channel 248A for the current Channel 273A at Whitehall. Therefore, while the applicants will be allowed to proceed to comparative hearing, it shall be ordered that any construction permit awarded as a result of this proceeding shall be made contingent on the outcome of MM Docket 89-579.

3. Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

4. *Late - filed amendments.* Pyramid has petitioned for leave to amend its application after December 2, 1988, the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANT	AMENDMENTS
Pyramid	October 18, 1989; January 25, 1990

5. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and P&B have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by P&B would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a a subsequent Order upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by P&B would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That grant of either application in this proceeding shall be contingent on the outcome of MM Docket 89-579.

9. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Pyramid ARE GRANTED, and the corresponding amendments ARE HEREBY ACCEPTED.

10. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

11. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

13. IT IS FURTHER ORDERED, That the applicants herein shall pursuant to Section 311 (a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in

such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 17, 1990

DELTA TELEPHONE COMPANY FILES PETITION FOR WAIVER OF PART 36 TO ESTABLISH NEW STUDY AREA AFTER PURCHASE OF SHERWOOD TELPHONE COMPANY

(PUBLIC COMMENT INVITED)

On June 25, 1990, Delta Telephone Company, Inc. (Delta) filed a petition for waiver of the definition of "study area" contained in Part 36 of the Commission's Rules in order to establish a new Delta study area in conjunction with its acquisition of Sherwood Telephone Company (Sherwood). Both companies are located in Mississippi, and Delta requests that it be permitted to include Sherwood in its study area.

Parties may file comments on this petition no later than **August 10, 1990.** Replies should be filed by **August 24, 1990.** Comments should reference AAD 90-20. A copy of each pleading should be sent to Gene Gold, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554 and to International Transcription Services, Inc. (ITS), 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies of the petition are available for public inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street, N.W., Room 812, Washington, D.C. Copies are also available from ITS.

For further information, contact Gene Gold, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CONFERENCE-CALL USA, INC.,
Complainant,

v. File No. E-90-129

SOUTHERN NEW ENGLAND
TELEPHONE COMPANY
Defendant

MEMORANDUM OPINION AND ORDER

Adopted: July 5, 1990; Released: July 17, 1990

By the Chief, Enforcement Division:

1. On March 20, 1990, Conference-Call USA, Inc. (CCUSA), filed a formal complaint with the Commission against Southern New England Telephone Company (SNET). CCUSA alleged that SNET refused to route conference call traffic to competitive suppliers such as CCUSA on a nondiscriminatory basis.

2. With the encouragement and participation of the Enforcement Division, the parties entered into negotiations aimed at resolving their dispute. On July 2, 1990, CCUSA and SNET jointly filed with the Commission a motion for dismissal with prejudice, stating that a settlement had been reached that was satisfactory to both parties. Since no issues remain in controversy and dismissal of the complaint would be in the public interest, we grant the parties' motion for dismissal.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated by Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the complaint filed by Conference-Call USA, Inc., IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

ALLNET COMMUNICATION SERVICES, INC.,
Complainant,

v.

THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY,	File No. E-89-207
NORTHWESTERN BELL TELEPHONE COMPANY, and	File No. E-89-208
PACIFIC NORTHWEST BELL TELEPHONE COMPANY	File No. E-89-209

Defendants.

ORDER

Adopted: July 10, 1990; Released: July 17, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 26, 1989, Allnet Communication Services, Inc., (Allnet) filed the above-captioned complaints alleging that certain rates charged by defendants were unjust and unreasonable in violation of Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). On June 13, 1990, Allnet filed a motion to dismiss the complaints in accordance with the terms set forth in a settlement agreement negotiated with the defendants. The defendants agreed to this request.

2. We are satisfied that dismissal of the complaints will serve the public interest by eliminating the need for further litigation and the expenditure of further time and resources of the parties and of this Commission.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that the request for dismissal of the above-captioned complaints IS GRANTED.

4. IT IS FURTHER ORDERED that the above-captioned complaints ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

ST. LOUIS ELECTRONICS COMMUNICATIONS CORP. — File No. 21838-CD-P/L-01-89

For authority to construct and operate new one-way facilities in the Public Mobile Service on frequency 152.84 MHz for Station KNKL762 at Lake of the Ozarks, Missouri

ST. LOUIS MOBILE SYSTEMS, INC. — File Nos. 27128-CD-P/ML-01-89, 27041-CD-P/ML-01-89

For authority to construct and operate additional one-way facilities in the Public Mobile Service on frequency 152.84 MHz for Station KNKJ413 at Richland and Osage Beach, Missouri

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990; **Released: July 17, 1990**

By the Chief, Mobile Services Division:

1. St. Louis Electronics Communication Corp. ("St. Louis Electronics") filed the captioned application on January 19, 1989, seeking authority to establish new one-way facilities at Lake of the Ozarks, Missouri. St. Louis Mobile Systems, Inc. ("St. Louis Mobile") filed the captioned applications on April 6, 1989, seeking authority to establish new one-way facilities at Richland and Osage Beach, Missouri. The applications were listed as electrically mutually exclusive.[1]

I. BACKGROUND

2. On October 10, 1989, St. Louis Mobile filed a request for comparative hearing, pursuant to Section 22.33(c) of the Commission's Rules.[2] In support of its request, St. Louis Mobile asserts that its Richland and Osage Beach applications represent the first phase of a planned expansion of its system. St. Louis Mobile attached a letter from Wayne Gifford, Esq. ("Gifford"), requesting wide-area paging service in the areas proposed to be served by St. Louis Mobile's applications.[3] St. Louis Mobile further states that it provides service to a number of U.S. Army personnel stationed at Fort Leonard Wood who require paging services at a military facility at Lake of the Ozarks and who would use St. Louis Mobile's proposed service. Moreover, according to St. Louis Mobile, based on a survey of its existing subscribers at St. Robert, Missouri, approximately 45 percent of the subscribers need wide-area paging service in the areas proposed to be served in St. Louis Mobile's applications.

II. DISCUSSION

3. St. Louis Mobile has failed to demonstrate that it is eligible for a comparative hearing. Selection by lottery among mutually exclusive applicants is the general rule, and exceptions to the rule are strictly construed and enforced. *See, e.g., Metro Mobile Corporation*, 5 FCC Rcd 1040 (Mob. Serv. Div. 1990); *Mobile Phone of Texas*, Mimeo No. 2728 (Mob. Serv. Div. released Feb. 22, 1985). Section 22.33(c)(1) of the Rules requires that the applicant requesting a comparative hearing satisfy certain requirements. St. Louis Mobile has satisfied one of these requirements because its proposed transmitters at Richland and Osage Beach, Missouri, are located within 40 miles of an existing St. Louis Mobile location at St. Robert, Missouri, and are for the same frequency.

4. Section 22.33(c)(1), however, further requires that a requesting applicant demonstrate a demand by existing subscribers for expanded service. We find that St. Louis Mobile's showing accompanying its hearing request is not sufficient to justify a comparative hearing. We have previously denied hearing requests when an applicant did not submit specific information which is necessary to comply with Section 22.33(c)(1). *See Bay Springs Telephone Co.*, 3 FCC Rcd 2133 (Mob. Serv. Div. 1988) (mere assertion that all of subscribers contacted, signed written requests for proposed expanded service found unpersuasive); *Radio Call Company of Long Island, Inc.*, 2 FCC Rcd 6772 (Mob. Serv. Div. 1987) (mere representation that expanded service is needed in response to subscriber demand is insufficient); *Speed Call, Inc.*, 2 FCC Rcd 6530 (Mob. Serv. Div. 1976) (subscriber survey forms submitted to indicate demand were found insufficient). By contrast, in *RAM Communications of Michigan, Inc.*, Mimeo No. 4848 (Mob. Serv. Div. June 3, 1986), the Mobile Services Division found that a comparative hearing had been justified when "specific information as to numbers of units, area covered and the purpose to be served by the present application" had been produced. Except for the Gifford letter, St. Louis Mobile has not presented specific information to identify the proposed subscribers, the numbers of units and the area to be served; its assertions of demand by existing subscribers are unsupported by any evidence. We have consistently found such showings to be inadequate to justify a comparative hearing. *See, e.g., Metro Mobile, supra*. Similarly, St. Louis Mobile has failed to show that the public interest would be served by using a comparative hearing procedure. Therefore, we deny St. Louis Mobile's request for comparative hearing. St. Louis Mobile's captioned applications and St. Louis Electronics' application will be included in a lottery to be announced in a subsequent public notice.

III. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that the request for comparative hearing filed by St. Louis Mobile Systems, Inc. IS DENIED.

6. IT IS FURTHER ORDERED that a lottery between the captioned applications of St. Louis Electronics Communication Corp. and St. Louis Mobile Systems, Inc. SHALL BE HELD at a time and place to be specified in a subsequent public notice.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] *See* Public Notice, Rpt. No. PMS-89-49-A (released Sept. 6, 1989).

[2] Section 22.33(c)(1) states that a mutually exclusive applicant is eligible to request a comparative hearing in lieu of the random selection procedure if it is:

> an applicant proposing to add one or more transmitter locations to an authorized station on the same frequency or frequencies for which it is already licensed and within 40 miles of existing transmitter locations on those frequencies, and when the applicant demonstrates in its application a demand by its existing subscribers for the expanded service . . . .

[3] St. Louis Mobile states that it has received similar letters from Big Piney Services, an electronics service and repair center in Waynesville, Missouri, and Luther C. Thomas, a contractor and proprietor of various businesses in the area, but does not submit copies of those letters.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Liability for Forfeiture of

COOK TELECOM	File Nos. 22018-CD-P/ML-01-86
INC. OF	24130-CD-P/ML-03-86
SAN FRANCISCO	63500-89-17-RPS

Notice of Apparent Liability for Forfeiture for failure to file notification with respect to Station KPE424 in the Public Mobile Service at Santa Clara, Sacramento, Rancho Cordova, and Grass Valley, California

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 1990; Released: July 17, 1990

By the Chief, Mobile Services Division:

1. Cook Telecom, Inc. of San Francisco ("Cook") has filed a "Petition for Reconsideration and Remission of Forfeiture" ("petition") of the $840.00 forfeiture imposed by the Mobile Services Division ("MSD")in a "Notice of Apparent Liability for Forfeiture" (" *NALF* ") issued May 23, 1989.

I. BACKGROUND

2. On July 31, 1986, the MSD, pursuant to Section 22.501(a)(5)(ii) of the Commission's rules, granted to Cook's predecessor in interest, Angelo Turrini d/b/a United Radiophone System ("Turrini"), developmental authority to construct and operate facilities for Station KPE424 on frequency 43.20 MHz at Santa Clara, California, effective through February 2, 1989.[1] Pursuant to Section 22.501(a)(5)(iv) of the rules, Turrini was required to submit four semi-annual television interference ("TVI") reports. On February 3, 1987, the MSD granted Turrini developmental authority to construct and operate facilities for Station KPE424 on frequency 43.20 MHz at Sacramento, Rancho Cordova, and Grass Valley, California, effective through February 24, 1989. Similarly, four semi-annual TVI reports were required to be filed.

3. On February 10, 1988, Cook acquired the stations from Turrini. On April 27, 1989, Cook filed an application for reinstatement of the authorizations for the Santa Clara, Grass Valley, and Rancho Cordova stations as well as a written request for Special Temporary Authority ("STA") to continue to operate these facilities pending action on its applications for reinstatement of the expired authorizations.[2] On May 5, 1989, Cook filed a reinstatement application and an STA request for the Sacramento facility. On May 18, 1989, the MSD granted Cook's written requests for STA. On May 23, 1989, the MSD issued the *NALF*, finding that an apparent violation of Section 22.3 of the rules had occurred for operating a facility in an unauthorized manner and assessed a forfeiture in the amount of $840.00. In the *NALF*, the MSD explained that the $840.00 forfeiture constituted a $10.00 per-day violation for 84 days (*i.e.*, from the February 2, 1989 expiration date of the authorization for the Santa Clara facility to the April 27, 1989 receipt date of the written STA request), and that the specified amount was determined after considering the facts as set forth in Section 503(b)(2)(A) of the Communications Act of 1934, as amended.

II. COOK'S CONTENTIONS

4. Cook argues that that its failure to timely file the relevant applications for permanent authorization was not willful, an essential element before a forfeiture may be imposed under Section 1.80(a) of the Rules, but rather, was entirely inadvertent. Cook states that although it acquired the facilities from Turrini on February 10, 1988, "due to confusion during the ownership transition," it did not discover until April 12, 1989, that applications for permanent authorization had not been filed for the Rancho Cordova and Grass Valley facilities. Cook further states that on April 20, 1989, it received the station files for the Rancho Cordova and Grass Valley facilities from Turrini's attorneys, whereupon it discovered that permanent authorizations had also not been filed for the Santa Clara and Sacramento facilities. Citing *Tri - County Telephone Company, Inc.*, 54 Rad. Reg. 2d (P&F) 1065, 1067 (Com. Car. Bur. 1983) (" *Tri - County* "), Cook contends that the Bureau has held that failing to make a timely filing due to administrative oversight may bear upon the degree of culpability in reviewing a forfeiture.

5. Cook also states that although it, its subsidiaries, and affiliates have owned more than 100 43 MHz band base stations, it has never, heretofore, failed to file timely applications to convert their developmental authority to permanent authority. Such compliance history, Cook says, has been considered by the Bureau in reviewing a forfeiture. Cook further contends that the public was not harmed by Cook's inadvertent lapse in converting to permanent authority. Additionally, Cook asserts that it promptly and voluntarily disclosed the lapses of authority for the subject facilities as soon as they were discovered. Cook states that *Tri - County* recognizes a licensee's good faith in voluntarily disclosing unauthorized operation as a mitigating factor. Finally, Cook argues that upon discovering the situation, it immediately and voluntarily implemented remedial measures to ensure future compliance with the Commission's rules.

III. DISCUSSION

6. After carefully reviewing the facts and Cook's assertions, we decline to grant reconsideration and remission of the forfeiture. Consequently, Cook's assertion that its violation lacks willfullness, an essential element for the imposition of a forfeiture under Section 1.80(a), is rejected. The fact that Cook's violation may have occurred due to "confusion during ownership transition," as it states, does not detract from the repeated nature of the violation, particularly given that a year elapsed between the time the transfer to Cook occurred and the time the developmental authority lapsed. Failure to file for an extension of developmental authority is a repeated violation on each day the filing is not made. Moreover, while *Tri - County* acknowledged that no prior violations and

prompt voluntary disclosure to the Commission could be mitigating circumstances in considering a forfeiture amount, it did so within the context of pointing out that the *Tri - County* licensee had submitted a financial statement showing that the affected station was a low-profit operation upon which the originally assessed forfeiture amount would have been a severe burden. In the proceeding before us, Cook has neither claimed financial hardship nor has submitted a financial statement in seeking remission of the $840.00 assessment. Finally, while absence of harm to the public may be taken into account in assessing the amount of forfeiture, pursuant to Section 1.80(b)(3) of the rules, the rule does not require that such harm be demonstrated before a forfeiture may be imposed.

7. In view of the foregoing and in light of all the circumstances, we find that the $840.00 forfeiture assessed by the *NALF* is not excessive or unduly harsh. Therefore, we conclude that there is no basis upon which to grant Cook's petition for reconsideration and remission of forfeiture.

IV. ORDERING PARAGRAPHS

8. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80(f)(4) of the Commission's Rules, IT IS ORDERED that Cook Telecom, Inc. of San Francisco FORFEIT to the United States the sum of Eight Hundred Forty Dollars ($840.00) for the violation of Section 22.3 of the Commission's Rules. Payment of the forfeiture may be made by mailing a check or similar instrument to the Commission payable to the order of the Federal Communications Commission within thirty (30) days of the release of this Order.

9. IT IS FURTHER ORDERED that if said forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act, as amended.

10. IT IS FURTHER ORDERED that a copy of this Order BE SENT to Cook Telecom, Inc. by Certified Mail, Return Receipt Requested.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] Section 22.501(a)(5)(ii) of the Rules states in pertinent part:

> Due to interference potential the frequencies listed in (a)(4) will only be granted on a developmental basis for two years subject to the provisions of [Sec.] 22.204 (a) and (c) . . . . When construction is completed a Form 489 shall be filed to request permanent authorization.

[2] Cook states that, on that date, it requested and received an oral STA for these facilities from the MSD staff pending its submission of a written STA request. MSD records, however, do not reflect that an oral STA request was made to the MSD, or that an oral STA was granted.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-334

In the Matter of

Amendment of Section 73.202(b), RM-7341
Table of Allotments,
FM Broadcast Stations.
(Sweet Home, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1990; Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Galaxy Broadcast Partners (petitioner), requesting the substitution of Channel 296C1 for Channel 296C2 at Sweet Home, Oregon, and the modification of its construction permit for Station KSKD to specify operation on the higher powered channel. Petitioner states that it will apply for the channel, if allotted.

2. Channel 296C1 can be allotted to Sweet Home in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in petitioner's outstanding construction permit.[1] As requested, we also propose to modify petitioner's construction permit for Station KSKD to specify operation on Channel 296C1. In accordance with Section 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest for use of the channel at Sweet Home or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

3. We believe the public interest would be served by proposing the substitution of Channel 296C1 for Channel 296C2 at Sweet Home, Oregon, since it could enable Station KSKD to expand its coverage area. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Sweet Home, Oregon	296C2	296C1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 6, 1990,** and reply comments on or before **September 21, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Heather McDaniel
Galaxy Broadcast Partners
33692 Santiam Highway
Lebanon, Oregon 97355
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 44-29-02 and West Longitude 122-34-55.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-333

In the Matter of

Amendment of Section 73.202(b), RM-7340
Table of Allotments,
FM Broadcast Stations.
(Mora, New Mexico)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1990; Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it the petition for rule making filed by Voices of the Desert (petitioner), seeking the allotment of Channel 284A to Mora, New Mexico, as its first local FM service. Petitioner states that it will apply for the channel, if allotted. Channel 284A can be allotted to Mora in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1]

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies " . . . among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Mora is not listed in the U.S. Census.[2] Therefore, the petitioner should present the Commission with sufficient information to demonstrate that Mora is incorporated, or that it has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. *See, e.g., Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989), *Sargent, Nebraska*, 4 FCC Rcd 3933 (1989), *Ansley, Alabama*, 46 Fed. Reg. 58688, published December 3, 1981, *Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983, and *Ellwood, California*, 50 Fed. Reg. 13031, published April 2, 1985.

3. We believe the public interest would be served by proposing the allotment of Channel 284A to Mora, New Mexico, since it could provide a first local FM service, if Mora is found to be a community for allotment purposes. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Mora, New Mexico	--	284A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 6, 1990,** and reply comments on or before **September 21, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

N. E. Jeweler
5263 Agro Drive
Frederick, Maryland 21701
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] The coordinates for this allotment are North Latitude 35-58-00 and West Longitude 105-19-48.

[2] We note that Mora is listed in the 1988 Rand McNally Commercial Atlas and attributed with a population of 800 persons. However, mere geographical location is not sufficient to establish "community" status. *See Vimville, Mississippi,* 48 FR 5974 (1983).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-386

In the Matter of

Amendment of Section 73.202(b), RM-6880
Table of Allotments,
FM Broadcast Stations.
(Orangeburg, South Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 5, 1990; Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Wilkes-Posey Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 6703 (1989), proposing the substitution of Channel 280C3 for Channel 280A at Orangeburg, South Carolina, and the modification of its license for Station WKSO to specify the higher powered channel. Petitioner filed comments stating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 280C3 for Channel 280A at Orangeburg, South Carolina, since it could enable Station WKSO to expand its coverage area. As proposed, we will also modify petitioner's license for Station WKSO to specify operation on the higher powered channel. Channel 280C3 can be allotted to Orangeburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) north to avoid a short-spacing to Station WGEC, Channel 280A, Springfield, Georgia, and to accommodate petitioner's desired transmitter site.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED. That effective **August 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Orangeburg, South Carolina	275A, 280C3, 294C1

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Wilkes-Posey Broadcasting, Inc. for Station WKSO, Orangeburg, South Carolina, IS MODIFIED to specify operation on Channel 280C3, in lieu of Channel 280A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 33-35-00 and West Longitude 80-50-00. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the licensee of Station WKSO may avail itself of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-334

In the Matter of

Amendment of Section 73.202(b),	RM-6716
Table of Allotments,	RM-7046
FM Broadcast Stations.	
(Stuart and Boone, Iowa)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 29, 1990; Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Coon Valley Communications (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 5992 (1989), proposing the allotment of Channel 251A to Stuart, Iowa, as the community's first local FM service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. G.O. Radio Boone, Inc. ("Radio Boone"), licensee of Station KZBA(FM), Boone, Iowa, filed a counterproposal requesting the substitution of Channel 252C3 for Channel 252A at Boone, Iowa, the modification of its license to specify the higher powered channel, and the allotment of Channel 300A to Stuart, Iowa.[2] Petitioner and Radio Boone filed reply comments supporting the counterproposal. [3] No other comments were received.

2. As stated in the *Notice*, petitioner's request was signed only by its technical consultant, and we were unable to determine if the technical consultant was a principal of the petitioner. Section 1.52 of the Commission's Rules requires that a petitioner, unless represented by legal counsel, sign and verify all pleadings submitted to the Commission. Therefore, the petitioner was requested to clarify the status of its technical consultant and comply with the signature and verification requirements of Section 1.52. In response, petitioner submitted correctly signed comments disclosing her identity and address. We note that the petitioner also failed to verify that the statements contained in the petition and commments were true and accurate to the best of her knowledge. However, since Channel 300A can be allotted to Stuart without conflicting with any other pending request or allotment, we believe that the failure of petitioner to verify her statements should not result in the severe penalty of depriving Stuart of its first local FM service. *See South Webster, Ohio*, 4 FCC Rcd 5593 (1989).

3. Channel 300A can be allotted to Stuart in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[4] Channel 252C3 can be allotted to Boone in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) southeast to avoid a short-spacing to Station KEMB, Channel 252A, Emmetsburg, Iowa, and Station KLSN, Channel 255A, Jefferson, Iowa, as well as to accommodate Radio Boone's desired transmitter site.[5]

4. We believe the public interest would be served by allotting Channel 300A to Stuart, Iowa, since it could provide the community with its first local FM service, and by substituting Channel 252C3 for Channel 252A at Boone, Iowa, since it could enable Station KZBA to expand its coverage area.[6] A comparison of the two proposals is not necessary since an alternate channel is available for Stuart. In accordance with Section 1.420(g) of the Commission's Rules, we will modify Radio Boone's license for Station KZBA to specify operation on Channel 252C3.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

City	Channel No.
Boone, Iowa	252C3, 257A
Stuart, Iowa	300A

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of G.O. Radio Boone, Inc., for Station KZBA, Boone, Iowa, IS MODIFIED to specify operation on Channel 252C3, in lieu of Channel 252A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

7. The window period for filing applications for Channel 300A at Stuart, Iowa, will open on **August 31, 1990,** and close on **October 1, 1990.**

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Boone, Iowa, has been added to the caption.

[2] Public Notice of the counterproposal was given on October 10, 1989, Report No. 1799.

[3] Petitioner, in supporting the counterproposal, stated that it would prefer the allotment of Channel 293A instead of Channel 300A because Channel 293A can be used at a transmitter site which it has already secured. However, the Commission generally does not protect a prospective applicant's desired transmitter site where the allotment will be available for application by multiple parties since we do not require the type of detailed technical antenna site showing required of an applicant and there is no guarantee that the petitioner will ultimately become the licensee. Further, petitioner failed to provide the coordinates of its desired transmitter site along with an engineering study demonstrating the feasibility of allotting the channel to Stuart in compliance with the Commission's minimum distance separation requirements. Therefore, we will not consider the allotment of Channel 293A to Stuart.

[4] The coordinates for Channel 300A at Stuart are North Latitude 41-30-18 and West Longitude 94-19-06.

[5] The coordinates for Channel 252C3 at Boone are North Latitude 41-57-55 and West Longitude 93-48-50.

[6] Because the petitions which resulted in these allotments were filed prior to October 2, 1989, the applicants for Channel 300A at Stuart, Iowa, and the licensee of Station KZBA at Boone, Iowa, may avail themselves of the provisions of Section 73.213(c)(1) of the Commission's Rules. *See* 47 CFR §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-163

In the Matter of

Amendment of Section 73.202(b), RM-6935
Table of Allotments,
FM Broadcast Stations.
(Columbus, Nebraska)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 9, 1990; Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission, on its own motion, issued the *Notice of Proposed Rule Making*, 4 FCC Rcd 4904 (1989), proposing the substitution of Channel 228C3 for Channel 228A at Columbus, Nebraska, and the modification of Station KWMG's license to specify operation on the higher powered channel.[1] Husker Broadcasting, Inc. ("Husker"), licensee of Station KWMG, filed a counterproposal requesting instead the substitution of Channel 228C1 for Channel 228A at Columbus.[2] Husker stated that it would file an application for the higher powered channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 228C1 for Channel 228A at Columbus, Nebraska, since it could enable Station KWMG to expand its coverage area. Channel 228C1 can be allotted to Columbus in compliance with the Commission's minimum distance separation requirements with a site restriction of 29.7 kilometers (18.5 miles) west to avoid a short-spacing to the construction permit for Station KRRK(FM), Channel 227A, Bennington, Nebraska. [3]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Columbus, Nebraska	228C1, 266C1

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Husker Broadcasting, Inc. for Station KWMG, Columbus, Nebraska, IS MODIFIED to specify operation on Channel 228C1, in lieu of Channel 228A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The Commission, on its own motion, proposed the reclassification of 149 stations from Class A to C3. The reclassification under consideration herein for Station KWMG, Columbus, Nebraska, is one of those proposals.

[2] Public Notice of the filing of the counterproposal was given on August 18, 1989, Report No. 1791.

[3] The coordinates for Channel 228C1 at Columbus are North Latitude 41-32-28 and West Longitude 97-40-50. Since Husker's counterproposal was filed prior to October 2, 1989, it may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-608

In the Matter of

Amendment of Section 73.202(b),	RM-6497
Table of Allotments,	RM-6756
FM Broadcast Stations.	RM-6757
(Arcadia, Goulds, Immokalee,	RM-6758
LaBelle, North Naples,	RM-6759
Palmdale, and Venus, Florida)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 3, 1990; Released: July 16, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Hispanic American Radio Broadcasting Corporation ("Hispanic"), licensee of Station WTHM(FM),[2] Channel 252A, Goulds, Florida, the Commission considers herein the *Notice of Proposed Rule Making and Orders to Show Cause*, 4 FCC Rcd 1234 (1989), proposing the substitution of Channel 252C for Channel 252A at Goulds, and modification of its license to specify operation on the higher powered channel. The *Notice* also proposed the substitution of Channel 221A for Channel 252A at Immokalee, Florida, with the modification of Station WCOO(FM)'s license, and the substitution of Channel 223A for Channel 221A at LaBelle, Florida, with the modification of Station WKZY(FM)'s license in order to accomplish the upgrade at Goulds.

2. In response to the *Notice*, Dakos Broadcasting, Inc. ("Dakos"), licensee of Station WOKD(FM), Channel 252A, Arcadia, Florida, filed a counterproposal requesting substitution of Channel 252C1 for Channel 252A at Goulds, and the substitution of Channel 252C1 for Channel 252A at Arcadia, Florida (RM-6756). Okaloacoochee Communications ("OK") filed a counterproposal and comments seeking allotment of Channel 222A to North Naples, Florida (RM-6757). KBC Communications ("KBC") filed a counterproposal requesting the allotment of Channel 223A to Palmdale, Florida (RM-6758). Lake Placid Broadcast Group ("Lake Placid") filed a counterproposal requesting allotment of Channel 223A to Venus, Florida (RM-6759). [3] Naples Radio, Inc. ("NRI"), licensee of Station WCOO(FM), Channel 252A, Immokalee, Florida, filed comments.

3. Thereafter, on July 28, 1989, Lake Placid withdrew its counterproposal. In addition, on August 11, 1989, KBC and OK withdrew their counterproposals. Therefore, we will dismiss their counterproposals and all comments responsive thereto will not be discussed. NRI and Omega Broadcasting Corporation ("Omega"), licensee of Station WKZY(FM), Channel 221A, LaBelle, Florida, filed comments on KBC and OK's counterproposals. On August 11, 1989, NRI and Omega withdrew their opposing comments. Hispanic filed supporting comments restating its intention to apply for Channel 252C at Gould, if allotted, and to reimburse NRI and Omega for the reasonable costs incurred with their channel changes at Immokalee and Labelle, respectively. Dakos and Hispanic filed reply comments. Hispanic and Gulf Dunes Broadcasting, Inc. ("Gulf Dunes"), the successor in interest to Dakos, filed late supplemental comments.[4] Manna Christian Missions, Inc. ("Manna"), applicant for Channel 220A at Bonita Springs, Florida, filed comments in response to the counterproposals and a supplement to those comments.[5] Cross Country Broadcasting, Inc. ("Cross Country"), permittee of noncommercial educational FM Station WBPT, Channel *208, Naples, Florida (BPED-84091912), filed comments.

4. In its counterproposal, Dakos requests the substitution of Channel 252C1 for Channel 252A at Goulds, and the substitution of Channel 252C1 for Channel 252A at Arcadia. Dakos contends that, if Hispanic would increase to a C1 facility, it would be possible for Station WOKD(FM) at Arcadia to upgrade to a C1 facility also on Channel 252, whereas, if Hispanic were allowed to operate as a full Class C facility, Dakos could not operate even as a Class C2 facility from any site consistent with the Commission's spacing requirements. Dakos also states that, if its proposal is granted, it will reimburse the licensees of Stations WCOO(FM) at Immokalee and WKZY(FM) at LaBelle for the reasonable expenses which they incur in making the channel changes.

5. Hispanic, in response to Dakos' counterproposal, states that Dakos' proposal would not provide a first or second service to any areas not now served, and would not provide any new first local service. Hispanic claims that the allotment of Channel 252C at Goulds would provide an important benefit by the provision of first and second service to an area of the State of Florida which is now underserved. Hispanic states that its proposal meets the objectives of the first two of the allotment criteria of *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982), and should be preferred over Dakos' counterproposal.

6. In its supplemental comments, Gulf Dunes, successor to Dakos, suggests the substitution of Channel 252C3 for Channel 252A at Arcadia, Florida, and modification of the license for Station WOKD(FM) to specify Channel 252C3. Gulf Dunes states that it will file an application to move the site of Station WOKD(FM) to a location that satisfies the Commission's spacing requirements for Class C3 facilities. In addition, Gulf Dunes states that it will withdraw its interest in its proposal to substitute 252C1 at Arcadia, Florida. Hispanic states that it supports Gulf Dunes' proposal to substitute Channel 252C3 for Channel 252A at Arcadia.

7. An engineering analysis confirms that Channel 252C3 can be substituted for Channel 252A at Arcadia, Florida, with a site restriction of 20.6 kilometers (12.8 miles) northwest to avoid a short-spacing to the construction permit for Station WRWX(FM), Channel 253A, Sanibel, Florida.[6] As stated in the *Notice*, Channel 252C can be substituted for Channel 252A at Goulds in compliance with the Commission's minimum distance separation requirements at its present transmitter site. Channel 221A can be substituted for Channel 252A at Immokalee in compliance with the Commission's minimum distance separation requirements at Station WCOO(FM)'s licensed transmitter site. Channel 223A can be substituted for

Channel 221A at LaBelle in compliance with the Commission's minimum distance separation requirements at Station WKZY(FM)'s licensed transmitter site.[7]

8. Hispanic and Dakos/Gulf Dunes filed comments stating their willingness to reimburse the licensees of Stations WCOO(FM) and WKZY(FM) for all reasonable and necessary expenses incurred with the change in channels. *See Circleville, Ohio*, 8 FCC 2d 159 (1967).

9. In view of the above information, we believe that the public interest would be served by granting the requests of Hispanic and Dakos/Gulf Dunes to allot upgraded Channel 252C to Goulds, and Channel 252C3 to Arcadia. In accordance with Section 1.420(g) of the Commission's Rules, we will substitute Channel 252C3 for Channel 252A at Arcadia, and modify the license of Station WOKD(FM). In addition, we will also substitute Channel 252C for Channel 252A at Goulds, Florida, and modify the license of Station WRTO(FM). In order to accommodate the Goulds modification, we will substitute Channel 221A for Channel 252A at Immokalee, Florida, and modify the license for Station WCOO(FM). We will also substitute Channel 223A for Channel 221A at LaBelle, Florida, and modify the license for Station WKZY(FM).

10. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **August 30, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

City	Channel No.
Arcadia, Florida	252C3
Goulds, Florida	252C
Immokalee, Florida	221A
LaBelle, Florida	223A

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WOKD(FM), Arcadia, Florida, IS MODIFIED, to specify operation on Channel 252C3 in lieu of Channel 252A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WRTO(FM), Goulds, Florida, IS MODIFIED, to specify operation on Channel 252C in lieu of Channel 252A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

13. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WCOO(FM), Immokalee, Florida, IS MODIFIED, to specify operation on Channel 221A in lieu of Channel 252A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license (BLH-841018CB) except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license (BLH-841018CB) except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

14. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WKZY(FM), LaBelle, Florida, IS MODIFIED, to specify operation on Channel 223A in lieu of Channel 221A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in license (BLH-781206AJ) except the channel as specified above. Any other changes, except for those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license (BLH-781206AJ) except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

15. IT IS FURTHER ORDERED, That the Secretary SHALL SEND BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Report and Order* to the licensees of Stations WKZY, WCOO, and WOKD, as follows:

Omega Broadcasting
Corporation
Station WKZY
3538 Albemarle Street, N.W.
Washington, D.C. 20008

Erwin G. Krasnow
Verner, Liipfert,
Bernhard,
McPherson and Hand
901 15th Street, N.W.
Washington, D.C. 20005-2301
(Attorney for Gulf Dunes
Broadcasting, Inc.)

Naples Radio, Inc.
Station WCOO
810 12th Avenue South
Naples, Florida 33940

16. IT IS FURTHER ORDERED, That the counterproposals of KBC Communications (RM-6758) requesting the allotment of Channel 223A to Palmdale, Florida, Okaloacoochee Communications (RM-6757) requesting the allotment of Channel 222A to North Naples, Florida, and Lake Placid Broadcasting Group (RM-6759) requesting the allotment of Channel 223A to Venus, Florida, ARE DISMISSED.

17. IT IS FURTHER ORDERED, That this proceeding is TERMINATED.

18. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The communities of Arcadia, North Naples, Palmdale, and Venus, Florida, have been added to the caption.

[2] Station WTHM's call sign was changed to Station WRTO.

[3] Public Notice of the Dakos, KBC, Lake Placid, and OK counterproposals was given on May 12, 1989, Report No. 1780.

[4] These pleadings aid in the expeditious resolution of this proceeding by resolving all outstanding issues. Therefore, we have accepted the late filed pleadings.

[5] On June 1, 1990, Manna withdrew its application for a new noncommercial educational FM station at Bonita Springs, Florida (BPED-881229MK). In light of the withdrawal of Manna's application, the pleadings filed by Hispanic and Manna's responses thereto need not be considered.

[6] The coordinates for Channel 252C3 at Arcadia are North Latitude 27-20-07 and West Longitude 82-01-18.

[7] The coordinates for Channel 252C at Goulds are North Latitude 25-32-24 and West Longitude 80-28-07. The coordinates for Channel 221A at Immokalee are North Latitude 26-21-19 and West Longitude 81-21-03. The coordinates for Channel 223A at LaBelle are North Latitude 26-48-46 and West Longitude 81-21-16.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-331

In re Applications of

PEGGIE POST MALLERY (hereafter "Mallery") File No. BPH-881202MB

DOLSON, INC. (hereafter "Dolson") File No. BPH-881205MH

DAVID EWASKOWITZ A/K/A DAVE RAVEN (hereafter "Ewaskowitz") File No. BPH-881205MI

RADIO INGSTAD WISCONSIN INC. (hereafter "Ingstad") File No. BPH-881205MJ

For Construction Permit for a New FM Station on Channel 234C2 (94.7 MHz) to serve Mosinee, Wisconsin

HEARING DESIGNATION ORDER

Adopted: June 28, 1990; Released: July 18, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Mallery*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and the applicant have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by Mallery would constitute a hazard to air navigation, an issue with respect thereto will be included and the FAA made a party to the proceeding.

3. *Ewaskowitz*. Ewaskowitz petitioned for leave to amend his application on August 7, 1989. The last day for filing amendments as of right in this proceeding was April 5, 1989. The amendment corrected the address provided in Section I of the application and, as result of an adverse Federal Aviation Administration determination, changed the applicant's transmitter site location. These amendments, filed pursuant to Sections 1.65 and 73.3522(a)(2) of the Commission's Rules, are therefore accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

4. *Ingstad*. Although the geographic coordinates specified in Ingstad's response to Section V-B, Item 2 (N. Lat. 44 degrees-57 minutes-28 seconds, W. Long. 89 degrees-45 minutes-52 seconds) agree with those plotted on its site map (Exhibit 3), they do not agree with those on the map label typed by the applicant (44 degrees-57 minutes-*78* seconds, 89 degrees-45 minutes-*57* seconds). Since the specified coordinates in Section V-B are consistent with those plotted on the applicant's site map, this discrepancy does not affect Ingstad's technical acceptability. However, the applicant will be required to submit a corrective amendment to its site map.

5. In response to Section V-B, Item 17, Ingstad states that the area within its predicted 60 dBU contour contains 85,366 square kilometers. In view of the four digit responses listed in the three other applications for this channel, this figure appears to be patently erroneous.[1] Therefore, Ingstad will be required to submit an amendment either clarifying its response or correcting its answer.

6. Section II, Item 6(b) asks:

> Does any member of the immediate family (*i.e.*, husband wife, father, mother, brother, sister, son or daughter) of *any party* to this application have any interest in or connection with any other broadcast station, pending broadcast application, newspaper in the same area (see Section 73.3555(c)) or, in the case of a television station applicant only, a cable television system in the same area (see Section 76.501(a))?

Ingstad answered in the affirmative. In its accompanying exhibit however, the applicant indicated that:

> Certain relatives of [Ingstad President and 33 1/3% shareholder] James Ingstad have broadcast interests, but a listing of those relatives and their interests does not appear to be required by Form 301.[2]

This response is not adequate. Ingstad has failed to indicate how the interests of his relations are excepted, and it will therefore be required to submit the appropriate amendment to the presiding Administrative Law Judge. [3]

7. The Commission requires that if there will be five or more fulltime station employees, the applicant must complete and file Section VI of Form 301, and supply a statement detailing hiring and promotion policies for women and each minority group whose representation in the available labor force is five percent or greater in the proposed service area. Although Ingstad filed this statement, it is deficient since it does not list the person or position responsible for implementing the applicant's Equal Employment Opportunity Program. Therefore, Ingstad will be required to file an amended EEO program with the presiding Administrative Law Judge, or an appropriate issue will be specified by the Judge.

8. *Areas and Populations*. Data submitted by the applicants indicate there would be significant difference in the size of the populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

9. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

10. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by Mallery would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

11. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

12. IT IS FURTHER ORDERED, That the petition for leave to amend filed by Ewaskowitz IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

13. IT IS FURTHER ORDERED, That Ingstad must submit the appropriate amendments correcting and/or clarifying its responses to Section V-B, as detailed in paragraphs 4 and 5 hereinabove, to the presiding Administrative Law Judge within 30 days of the release of this Order.

14. IT IS FURTHER ORDERED, That Ingstad must clarify and/or correct its response governing the broadcast interests held by relatives of James Ingstad, as detailed in paragraph 6 hereinabove, by submitting the appropriate amendment to the presiding Administrative Law Judge within 30 days of the release of this Order.

15. IT IS FURTHER ORDERED, That within 30 days of the release of this Order, Ingstad shall submit Section VI information in accordance with the requirement of Section 73.2080(c) of the Commission's Rules to the presiding Administrative Law Judge.

16. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

17. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

18. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTES

[1] The other applicants in this proceeding list areas within their predicted 60 dBU contours ranging from 8483.9 (Ewaskowitz) to 8550 (Dolson) square kilometers.

[2] Our ownership records reveal, for example, that a Robert E. Ingstad owns 100% of Radio Ingstad Minnesota, Inc., licensee of stations KDHL (AM)/ KQCL (FM) in Faribault, Minnesota and 80% of Radio Ingstad Nebraska, licensee of KKPR (AM)/-FM in Kearney, Nebraska.

[3] Ingstad also lists Paul Brewster in its exhibit addressing other broadcast interests. However, the name specified in its response to Section II, Item 4 is Paula Brewster. The applicant will also be required to clarify this discrepancy.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-332

In re Applications of

SMYRNA BROADCASTING CORPORATION (Hereafter "Broadcasting")	File No. BPH-880511MB
ALICE RANDALL WILLIAMS (Hereafter "Williams")	File No. BPH-880512MA
GEORGE S. FLYNN, Jr. (Hereafter "Flynn")	File No. BPH-880512MC
ONEAL COMMUNICATIONS GROUP, INC. (Hereafter "Oneal")	File No. BPH-880512MD
LASER WAVE BROADCASTING COMPANY (Hereafter "Laser Wave")	File No. BPH-880512ME

For Construction Permit for a New FM Station; Channel 231A, 94.1 MHz in Smyrna, Tennessee

HEARING DESIGNATION ORDER

Adopted: June 28, 1990; Released: July 18, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Broadcasting*. On May 12, 1990, Broadcasting filed a Petition for Leave to Amend its application. The applicant has petitioned for leave to amend its application after August 16, 1988, the last day for filing amendments as of right. The subject amendment was accompanied by the good cause showing required by 47 C.F.R. § 73.3522(a)(2); consequently, the amendment is accepted for filing. However, an applicant may not improve its comparative advantage after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

3. *Oneal*. Information before the Commission indicates that Oneal was organized and is affiliated with Sonrise Management Services ("Sonrise"). Sonrise has been the subject of numerous "real party-in-interest" issues added by presiding Administrative Law Judges in a number of mutually exclusive proceedings. For example, issues concerning Sonrise have been designated in each of the following proceedings:

City/State	Docket No.
Solona, Florida	87-464
Rockledge, Florida	87-556
Silver Springs, Florida	88-119
East Ridge, Tennessee	88-122
Des Moines, Iowa	88-238
Nags Head, North Carolina	88-277
Tyler, Texas	88-280
Raleigh, North Carolina	88-306
Sedona, Arizona	88-335
Mableton, Georgia	88-400
Evansville, Indiana	88-403
Swanton, Ohio	88-432
Atlantic City, New Jersey	88-433

Identical issues were specified in each of these proceedings: whether or not Sonrise was a real party-in-interest in the subject applicant, whether or not the applicant's organizational structure was a sham, and the effect thereof on the applicant's qualifications to be a Commission licensee. In each of the proceedings listed above, the Sonrise-affiliated applicant has dismissed its application rather than resolving these issues. These unresolved issues call into question Oneal's qualification to be a Commission licensee. Therefore, such issues will be specified and tried against Oneal in this proceeding.

4. The FAA has determined that the tower proposed by Oneal would constitute a hazard to air navigation and Oneal has failed to file an amendment to remedy this situation. Accordingly, an air hazard issue with respect to Oneal will be included and the FAA made a party to the proceeding.

5. *Other Matters*. Attempts to obtain FAA clearance through the Commission's Antenna Survey Branch and applicants Flynn and Laser Wave have been unsuccessful. Accordingly, since no determination has been received as to whether the antenna proposed by these applicants would constitute a hazard to air navigation, an issue with respect thereto will be included.

6. The applicants below have petitioned for leave to amend their applications on the dates show. The accompanying amendments were filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendments are accepted for filing. However, an applicant may not improve its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendments will be disallowed.

APPLICANTS	AMENDMENTS FILED
Broadcasting	June 6, 1989; September 22, 1989; October 27, 1989; January 29, 1990; April 13, 1990
Flynn	September 7, 1988; October 6, 1988; February 3, 1989; March 1, 1989; August 28, 1989; February 12, 1990; March 30, 1990; June 13, 1990
Oneal	November 16, 1988; November 3, 1989
Laser Wave	December 15, 1988; May 29, 1990

7. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

8. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party to the application of Oneal.

2. To determine whether Oneal's organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues one and two above, whether Oneal possesses the basic qualifications to be a licensee of the facilities sought herein.

4. To determine whether there is a reasonable possibility that the tower heights and locations proposed by Flynn, Oneal, and Laser Wave would constitute a hazard to air navigation.

5. To determine which of the proposals would, on a comparative basis, best serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. IT IS FURTHER ORDERED, That the petitions for leave to amend filed by Broadcasting, Flynn, Oneal and Laser Wave ARE GRANTED, and the corresponding amendments ARE ACCEPTED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That the Federal Aviation Administration IS MADE A PARTY to this proceeding with respect to the air hazard issue only.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
July 9, 1990

Released: July 9, 1990

Robert J. Butler, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Dear Mr. Butler:

This letter concerns the petition for declaratory ruling filed by Twixtel Technologies, Inc. (Twixtel). *See Public Notice*, DA 90-23, 5 FCC Rcd 283 (1990).

Twixtel states that it is a non-dominant resale interexchange carrier currently offering long distance telephone service. It states that it wishes to enter into business relationships with cable television operators to offer interactive cable television, enhanced telecommunications, and long distance telephone services to individuals in resort and rental housing markets. By means of a proprietary telephone switching network, Twixtel would provide automated credit card billing for video programming services; the cable operator would provide the programming, equipment installation and other support services. In order to ensure that it may enter into the proposed arrangements with cable television operators, Twixtel requests that the Commission determine that the telephone company/cable television cross-ownership restrictions of Section 63.54(a) of the Commission's rules, 47 C.F.R. §63.54(a), and Section 613(b)(1) of the Cable Communications Policy Act of 1984 (Cable Act), 47 U.S.C. §533(b)(1), do not apply to non-dominant resellers of interexchange services.

In support of the requested ruling, Twixtel states that the express language of the cross-ownership ban does not apply to interexchange resellers because they do not have "telephone service areas." Twixtel states that the policy of the telco/cable cross-ownership ban is not applicable to resellers because resellers do not have the opportunity to use control over pole and conduit to disadvantage cable operators or to subsidize costs of cable service from a regulated rate base for monopoly services. Twixtel states that the Commission has recognized in the *Telco / Cable Cross - Ownership Inquiry* (Further Notice of Inquiry and Notice of Proposed Rule Making), CC Docket No. 87-266, 3 FCC Rcd 5849 (1989) that uncertainty exists concerning the application of the cross-ownership restrictions to non-dominant interexchange carriers. While the Commission has not issued a ruling on the issue, Twixtel states that it has filed its petition in order to be able to take advantage of existing opportunities.

In response to the Twixtel petition, Southwestern Bell Corporation (SWB) states that many carriers could bring forth potential business opportunities that might be available if the Commission were to determine that the cross-ownership ban does not apply to them. Addressing the Twixtel petition in advance of the *Telco / Cable Cross - Ownership Inquiry* would give it an unfair head start in the cable television business, SWB states. Twixtel should use the waiver process for immediate relief, SWB states. The Bell Atlantic Telephone Companies (Bell Atlantic) state that the statutory cross-ownership ban by its own terms applies to "any common carrier" including resellers. Any relief to Twixtel, Bell Atlantic states, should come through revision of the permissible standards of affiliation between telephone companies and cable systems. Bell Atlantic urges the Commission to proceed with amending the standards of affiliation proposed in the *Telco / Cable Cross - Ownership Inquiry* to provide Twixtel the relief it seeks, rather than by the requested ruling.

Williams Telecommunications Group, Inc. (WTG) and the Competitive Telecommunications Association (CompTel) state that the requested ruling does not go far enough. The reasons making the cross-ownership ban inapplicable to resellers apply equally to all nondominant interexchange carriers, they state. WTG opposes any relief for resellers because it would unfairly limit the rights of other nondominant carriers. It would also create uncertainty as to whether a carrier with limited network facilities is a reseller, WTG states. Comptel states that a ruling covering all non-dominant interexchange carriers would not prejudge issues in the *Telco / Cable Cross - Ownership Inquiry* because that proceeding focused mainly on AT&T and mentioned non-dominant interexchange carriers only as a secondary matter. The Commission should grant relief for all nondominant carriers, WTG and Comptel urge. MCI Telecommunications Corporation (MCI), and Heritage Cablevision of Colorado, Inc. (Heritage) support the relief sought by Twixtel for the reasons advanced in the Twixtel petition. MCI submits further that the ban was not meant to apply to any interexchange carriers. The United States Telephone Association (USTA) supports the result sought by Twixtel but urges that it be granted on the basis that its proposed arrangement with cable operators would not be a prohibited affiliation under the Cable Act. NARUC states that it has not yet taken a position on whether common carriers should be permitted to provide video programming and does not wish to express an opinion as to whether the Twixtel petition should be granted. However, it states, to the extent the Commission grants the Twixtel petition it should make clear that its ruling only applies to interstate services. Twixtel and other similarly situated carriers should still be subject to state regulation to the extent that they wish to provide intrastate services. NARUC states.

We agree with Twixtel that the express language of the statutory cross-ownership ban does not apply to interexchange resellers. The ban prohibits the provision of video programming by a carrier within its "telephone service area." That term is not specifically defined in the Cable Act; however, its meaning can be gleaned from the history of the Cable Act and the Commission's decisions preceding and implementing that Act. Although the Commission in the *Telco / Cable Cross - Ownership Inquiry* is examining, *inter alia*, whether the ban in the Commission's rules and the Cable Act applies only to carriers with local telephone exchange service areas, the Commission did not undertake a separate examination of whether the telco/cable cross-ownership ban applies to resellers of interexchange telephone services. This is the issue presented by the Twixtel petition and which the Bureau will address here.

The restriction on telephone company provision of video programming originated with a determination by the Commission that the monopoly position of the local telephone company might enable it to engage in anticompetitive conduct toward independent cable operators, by denying access to pole and conduit controlled by it and/or subsidizing its cable television service from its regulated rate base. The Commission was concerned with the potential extension of the local telephone company's monopoly power to cable television and other services that could be provided by cable facilities. The Commission therefore barred telephone common carriers from providing "cable television service" within their "telephone service areas." *Applications of Telephone Common Carriers for Section 214 Certificates for Channel Facilities Furnished to Affiliated Community Antenna Television Systems*, 21 FCC 2d 307, 324 (1970), *recon. in part*, 22 FCC 2d 746, *aff'd General Telephone Co. of S. W. v. United States*, 449 F.2d 846 (5th Cir. 1971). In the Cable Act, Congress adopted statutory telephone company/cable television cross-ownership restrictions modeled on the Commission's preexisting cross-ownership rules, and the regulations adopted by the Commission to implement those statutory restrictions were essentially the same as the Commission's preexisting cross-ownership rules. Thus, at the present time, Section 613(b)(1) of the Cable Act and Section 63.54(a) of the rules prohibit a common carrier subject to Title II from "providing video programming," either directly or indirectly through an affiliate, within its "telephone service area."

Resellers, which provide interexchange telecommunications service by means of purchase of service from facilities-based carriers,[1] do not obtain, thereby, the ability to engage in the anticompetitive practices the telco/cable cross-ownership ban was intended to prevent. Because they control no facilities, such entities do not control essential access to poles and conduit, and they are not able improperly to cross-subsidize provision of video programming from a regulated rate base. Indeed, in finding that carriers such as resellers need not file Section 214 applications, the Commission determined that construction of facilities by such carriers for their own cable television service "does not create the concerns about exclusionary conduct that underlie the cross-ownership rules." *Blanket Section 214 Authorization for Provision by a Telephone Common Carrier of Lines for its Cable Television and other Non - Common Carrier Services Outside its Telephone Service Area*, CC Docket No. 84-28, 98 FCC 2d 354, 356 (1984).

In light of the Commission's traditional concerns with carrier denial of access to essential poles and conduit, as well as the potential for improper cross-subsidization from monopoly services, the Bureau believes that a threshhold prerequisite for application of the statutory ban is the possession and control of basic communications facilities. This reading of the statute is consistent with the preexisting regulatory ban on which the statute is broadly based. The Bureau does not believe that, in delineating areas in which a carrier may not provide video programming, the Commission, or the Congress in adopting Section 613(b), intended the term "telephone service area" to include an area in which resale interexchange carriers do not possess or control basic communications facilities. The Bureau concludes that because resale interexchange carriers do not provide service by means of such facilities, they do not have "telephone service areas" within the meaning of the ban and, therefore, are not subject to it.

We note that, in situations where other carriers do not possess the facilities or have the same ability to engage in the anticompetitive conduct which prompted adoption of the cross-ownership rules, they are presently permitted to provide cable television service. Local exchange carriers, for example, already are permitted to provide cable television service outside of their telephone service areas. Similarly, the Commission has determined that non-wireline cellular carriers are not subject to the ban. *Implementation of the Cable Communications Policy* Act of 1984, 58 R.R. 2d 1, 16 (1985), *recon. denied*, 60 R.R. 2d 514 (1986), *remanded on other grounds sub nom. ACLU v. FCC*, 823 F.2d 1554 (D.C. Cir. 1987), *cert. denied*, 108 S. Ct. 1220 (1988).

Neither the Cable Act, its legislative history, nor the Commission decisions adopting and implementing the telco/cable cross-ownership restrictions reveal a basis to apply the ban to resale interexchange carriers. The Bureau concludes that the telco/cable cross-ownership restrictions do not apply to such resellers, because they have no "telephone service areas."[2] The Twixtel petition requests only a determination encompassing application of the ban to these carriers. The Bureau's determination does not address application of the cross-ownership ban to resale interexchange carriers affiliated with local exchange carriers. [3] Finally, the Bureau does not address the broader issue of whether "telephone service area" as used in the telco/cable cross-ownership ban means "local exchange service area."

Sincerely,

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] The Commission has defined resellers as "those carriers who do not own any transmission facilities but rather obtain basic communications services from underlying carriers for resale purposes." *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, 91 FCC 2d 59, 62 (1982).

[2] We note that this determination applies to the provision of cable television service by common carriers, which, the Commission has determined, constitutes interstate communications. *General Telephone Company of California*, 13 FCC 2d 448 (1968), *aff'd, General Telephone Co. of California v. F.C.C.*, 413 F.2d 390 (D.C. Cir. 1969).

[3] The standards of permissible affiliation between communications common carriers subject to the cross-ownership ban and cable television systems are set forth in Notes 1 and 2 to Section 63.54 of the Commission's rules, 47 C.F.R. § 63.54, Notes 1 and 2.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 10, 1990

PLEADING CYCLE SET FOR COMMENTS ON PETITION FOR RECONSIDERATION OF INSIDE WIRING ACCOUNTING ORDER

On July 2, 1990, the People of the State of California and the Public Utilities Commission of the State of California (collectively, California) filed a petition for reconsideration of the *Inside Wiring Accounting Order*, 5 FCC Rcd 3521 (1990). That Order denied California's application for review of *RAO Letter 14*, 4 FCC Rcd 7110 (Accounting and Audits Div. 1990), which had required all carriers subject to the Commission's joint cost rules to classify their inside wiring services as nonregulated activities for federal accounting purposes pending Commission action on remand of *NARUC v. FCC*, 880 F.2d 422 (D.C. Cir. 1989).

In its petition, California argues that the *Inside Wiring Accounting Order* is arbitrary and capricious and contrary to the requirements of Sections 2(b) and 410(c) of the Communications Act as well as the principles of *California v. FCC*, No. 87-7230 (9th Cir. June 6, 1990), *NARUC v. FCC*, and *Hawaiian Tel. Co. v. Public Util. Comm'n of Hawaii*, 827 F.2d 1264 (9th Cir. 1987), *cert. denied*, 403 U.S. 923 (1988). California maintains that the Commission must subject inside wiring costs to the jurisdictional separations process so that those states which choose to tariff inside wiring services can set rates based on only costs assigned to the intrastate jurisdiction.

Interested parties may file comments on California's petition no later than **August 6, 1990.** Replies should be filed no later than **August 22, 1990.** Comments and replies should be filed with the Secretary, FCC, 1919 M Street, N.W., Washington, D.C. 20554. A copy of each filing should be sent to William A. Kehoe III, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 257, Washington, D.C. 20036, and to International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036. A copy of California's petition is available for public inspection and copying in the Accounting and Audits Division's public reference room, 2000 L Street, N.W., Room 812, Washington, D.C. Copies are also available from ITS at (202) 857-3800.

For further information contact William A. Kehoe III at (202) 632-7500.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of the Aviation Services Rules (Part 87) to provide for the licensing of control tower remote communications outlet stations at airports without control towers. RM-6791

ORDER

Adopted: July 9, 1990; Released: July 18, 1990

By the Commission:

1. The Federal Aviation Administration (FAA) has filed a petition for rule making (RM-6791)[1] requesting that we amend Part 87 (Aviation Services) of the Commission's Rules, 47 C.F.R. Part 87, to provide for a new type of aeronautical radio station at airports without control towers (uncontrolled airports). This new type of station is called a control tower remote communications outlet station (RCO). An RCO would be controlled via land lines from a nearby FAA control tower or other FAA air traffic control facility. The RCO transmitter and receiver, however, would be owned and maintained by a non-Government entity such as a local government airport authority or a private airport operator. The Commission's Rules do not presently provide for the licensing or operation of RCOs.

2. The FAA indicates that the installation and operation of RCOs at small uncontrolled airports located near large airports with control towers (controlled airports) will enable the FAA to provide air traffic services, such as terminal area information, weather information, and approach and departure information to additional aircraft and airports. The FAA argues that RCOs will enhance safety and improve efficiency of aircraft operations in many areas throughout the United States.[2] Further, the FAA states that it will sign a Memorandum of Agreement with prospective applicants concerning all airport RCO operations. [3]

3. We conclude that it is in the public interest to amend the Aviation Services Rules as requested by the FAA to authorize the operation of RCOs. Local government entities and private airport operators will be able to operate a new class of aeronautical radio station that will make additional air traffic information available to the segment of the aviation community using uncontrolled airports near large controlled airports. This action will improve safety and efficiency of aircraft operations in many of this nation's large urban areas. The amendments to the Aviation Services Rules that we are adopting will include RCOs under the provisions for airport control tower stations, Part 87, Subpart O. Because these facilities will provide somewhat similar air traffic control services and utilize the same group of air traffic control frequencies, including RCOs under the provisions applicable to airport control tower stations is consistent with our existing regulatory structure. We have also included RCOs in other rules that currently cross reference airport control tower stations.

4. Further, the new rules provide that an application for an RCO will be granted only when the application is accompanied by a written statement from the appropriate FAA Regional Office approving the proposed RCO operation. This will ensure that coordination between the applicant and the FAA is completed and will avoid the need for extensive coordination between the Commission and the FAA.

5. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public as a result of the requirement that RCO applicants obtain FAA approval prior to licensing. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

6. This rule amendment authorizes the licensing and operation of remote controlled transmitters and receivers for the purpose of providing air traffic services at small uncontrolled airports near large controlled airports. Because the FAA does not have the resources to construct and maintain facilities at these many small airports, the additional safety services will not be available to the flying public until these rule amendments are adopted. Further, the decision by non-Government entities to construct and maintain facilities is voluntary, and the frequencies will be assigned from the frequency blocks currently available for air traffic control purposes. The change is non-controversial and constitutes a minor amendment to the rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. § 553(b)(B). In addition, because this amendment will promote increased safety and efficiency in the aviation service, we find good cause to authorize the operation of control tower remote communications outlets effective immediately. Therefore, this rule amendment will be effective upon publication in the Federal Register. *See* 5 U.S.C. § 553(d).

7. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 87 of the Commission's Rules, 47 C.F.R. Part 87, IS AMENDED as set forth in the Appendix below, effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 87 of Chapter I Title 47 of the Code of Federal Regulations is amended as follows:

A. PART 87 - AVIATION SERVICES.

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.213 is amended by revising paragraph (b)(1) to read as follows:

§ 87.213 Scope of service.

* * * * *

(b)(1) Unicom transmissions must be limited to the necessities of safe and expeditious operation of aircraft such as condition of runways, types of fuel available, wind conditions, weather information, dispatching, or other necessary information. At any airport at which a control tower, control tower remote communications outlet station (RCO) or FAA flight service station is located, unicoms must not transmit information pertaining to the conditions of runways, wind conditions, or weather information during the hours of operation of the control tower, RCO or FAA flight service station.

* * * * *

3. Section 87.215 is amended by revising paragraphs (b) and (d) to read as follows:

§ 87.215 Supplemental Eligibility

* * * * *

(b) Only one unicom will be authorized to operate at an airport which does not have a control tower, RCO or FAA flight service station. At an airport which has a part-time or full-time control tower, RCO or FAA flight service station, the one unicom limitation does not apply and the airport operator and all aviation services organizations may be licensed to operate a unicom on the assigned frequency.

* * * * *

(d) An applicant for a unicom license, renewal or modification of frequency assignment at an airport which does not have a control tower, RCO or FAA flight service station must notify in writing the owner of the airport and all aviation service organizations located at the airport. The notice must include the applicant's name and address, the name of the airport and a statement that the applicant intends to file an application with the Commission for a unicom. The notice must be given within the ten days preceding the filing of the application with the Commission. Each applicant must submit a statement that either notice has been given and include the date of notification, or notice is not required because the applicant owns the airport and there are no organizations that should be notified.

4. Section 87.217 is amended by revising paragraph (a)(1) to read as follows:

§ 87.217 Frequencies.

(a) * * *

(1) 122.950 MHz at airports which have a full time control tower, full time RCO or full time FAA flight service station.

* * * * *

5. Section 87.345 is amended by revising paragraph (b) to read as follows:

§ 87.345 Scope of service.

* * * * *

(b) At an airport which has a control tower, control tower remote communications outlet station (RCO) or FAA flight service station in operation, communications by an aeronautical utility mobile station are limited to the management of ground vehicular traffic.

* * * * *

6. Section 87.347 is amended by revising paragraphs (a) and (b)(2) to read as follows:

§ 87.347 Supplemental eligibility.

(a) Aeronautical utility stations may transmit on unicom frequencies only at airports which have a unicom and a part-time or no control tower, an RCO or an FAA flight service station.

(b) * * *

(2) Identify the vehicle(s) in which the station is to be located; and

* * * * *

7. Section 87.349 is revised to read as follows:

§ 87.349 Frequencies

(a) The frequency assigned to an aeronautical utility station at an airport served by a control tower, RCO or FAA flight service station is the frequency used by the control tower for ground traffic control or by the flight service station for communications with vehicles. The frequency assigned is normally from the band 121.600-121.925 MHz.

(b) The frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis at airports which have a part-time control tower, part-time RCO or part-time FAA flight service station and a unicom.

(c) At airports which have a unicom but no control tower, RCO or FAA flight service station, the frequency assigned to the unicom is available to aeronautical utility stations on a noninterference basis. The frequencies available for assignment to unicoms are described in Subpart G.

(d) At airports which have no control tower, RCO, flight service station or unicom, the frequency 122.900 MHz is available for assignment to aeronautical utility stations.

8. Section 87.417 is amended by revising paragraph (a) to read as follows:

§ 87.417 Scope of service.

(a) Airport control tower stations (control towers) and control tower remote communications outlet stations (RCOs) must limit their communications to the necessities of safe and expeditious operations of aircraft operating on or in the vicinity of the airport. Control towers and RCOs provide air traffic control services to aircraft landing, taking off and taxiing on the airport as well as aircraft transiting the airport traffic area. Additionally, control towers and RCOs can provide air traffic control services to vehicles operating on airport movement areas (see Subpart L). Control towers and RCOs must serve all aircraft without discrimination. An RCO must be remotely operated from a control tower or other FAA control facility located at a nearby airport.

* * * * *

9. Section 87.419 is amended by revising and redesignating the existing paragraph as (a) and adding a new paragraph (b) to read as follows:

§ 87.419 Supplemental eligibility.

(a) Only one control tower or RCO will be licensed at an airport.

(b) Each application for an RCO must be accompanied by a written statement from the appropriate FAA Regional Office approving the requested RCO operation.

10. Section 87.421 is amended by revising the introductory paragraph and paragraphs (a) through (c) to read as follows:

§ 87.421 Frequencies.

The Commission will assign VHF frequencies after coordination with the FAA. Frequencies in the following bands are available to control towers and RCOs. Channel spacing is 25 kHz.

118.000-121.400 MHz
121.600-121.925 MHz
123.600-128.800 MHz
132.025-135.975 MHz

(a) The frequency 123.100 MHz is available for use by control towers and RCOs at special aeronautical events on the condition that no harmful interference is caused to search and rescue operations in the locale involved.

(b) Frequencies in the bands 200.0-285.0 and 325.0-405.0 kHz will only be assigned to control towers and RCOs authorized to operate on at least one VHF frequency, unless a showing has been made that elimination of VHF service will not adversely affect life and property in the air.

(c) Frequencies in the band 121.600-121.925 MHz are available to control towers and RCOs for communications with ground vehicles and aircraft on the ground. The antenna heights shall be restricted to the minimum necessary to achieve the required coverage. Channel spacing is 25 kHz.

* * * * *

11. Section 87.425 is revised to read as follows:

§ 87.425 Interference.

Control towers and RCOs must not cause harmful interference to control towers or RCOs at adjacent airports. If interference between adjacent control towers or RCOs exists, the Commission will direct the licensees how to eliminate the interference.

FOOTNOTES

[1] Public Notice of the petition was given June 22, 1989, Report No. 1794. No comments were received.

[2] *See* Petition at 3.

[3] *See* Petition at 4.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Waiver of Section 97.501 of the
Commission's Rules to Authorize
Foreigners to be Control Operators
Of Amateur Stations Competing in
The 1990 World Radiosport
Team Championship Contest.

ORDER

Adopted: July 11, 1990; Released: July 13, 1990

By the Chief, Private Radio Bureau:

1. On July 20, 1990, amateur stations in Seattle, Washington, having foreign citizens as control operators will compete in the World Radiosport Team Championship operating contest. In view of the apparent imminence of reciprocal operating arrangements between the United States and their countries, the following foreign amateur operators are authorized to be designated by the station licensee as the control operators of these amateur stations during the contest:

a. *Citizens of the Union of Soviet Socialist Republics:* Gueorgui Rouminatsev, Konstantin Khatchatourov, Iouri Donskinh, Vladimir Gorienko, Mikhail Zavaroukhine, Evgueni Stavitski, Iouri Kourinyi, Vladimir Oumanets, Valeri Pakhomov, Valeri Agabekov, Boris Stepanov, Guennadi Choulguin, and Vassili M. Bondarenko.

b. *Citizens of Bulgaria:* Rumen V. Getchev and Ognjan Tzvetanov.

c. *Citizens of Hungary:* Gyozo Macsuga and Gyala Palmai.

d. *Citizens of the Czech and Slovak Federated Republic:* Jiri Sanda and Karel Karmasin.

2. The foreign amateur operator must have completed a Form 610-A, must hold a valid amateur service license issued by his/her country of citizenship, and must not be a citizen of the United States.

3. All operation of the amateur station must be in accord with Part 97 of the Commission's Rules, 47 C.F.R. Part 97. Licensees of the participating stations should note that Sections 97.103(a) and (b) of the Commission's Rules, 47 C.F.R. § 97.103(a) and (b), provide that the station licensee is responsible for the proper operation of the station in accordance with the Rules. The station licensee must designate the station control operator. When the control operator is a different amateur operator than the station licensee, both persons are equally responsible for proper operation of the station. The Commission will presume that the station licensee is also the control operator unless documentation to the contrary is in the station records.

4. The station control operator privileges are those authorized by the foreign amateur operator's government. The operator privileges, however, shall not exceed those privileges in ITU Region II of a Commission-issued Amateur Extra Class operator license. *See* Section 97.107(b) of the Commission's Rules, 47 C.F.R. § 97.107(b).

5. IT IS ORDERED that Section 97.501 of the Commission's Rules, 47 C.F.R. § 97.501, IS HEREBY WAIVED for the above listed amateur operators who are eligible as specified above to be designated as the control operators for amateur stations KR7G, K7WA, W7KJJ, N7FSW, K7GEX, WA7EBH, K7LXC, W7QGP, K7RI, W7KZE, N7NKG, K7LR, W7KT, W7EJZ, WA7BUY, K7SS, N7GWC, N7MJZ, W7TSQ, N0AX, K7LR, W7OM, and KT7G for the period 0001 UTC July 16, 1990, to 2359 UTC July 31, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-335

In the Matter of

Amendment of Section 73.202(b), RM-7056
Table of Allotments,
FM Broadcast Stations.
(De Witt and England, Arkansas)

NOTICE OF PROPOSED RULE MAKING

Adopted: June 29, 1990; Released: July 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the joint petition for rule making filed by Diamond State Broadcasting, Inc., ("Diamond"), licensee of Station KLRA-FM,[1] Channel 243A, England, Arkansas, and Quadras, Inc., ("Quadras"), licensee of Station KDEW-FM,[2] Channel 244A, De Witt, Arkansas. [3] Petitioners request the substitution of Channel 243C3 for Channel 243A at England, and modification of the license for Station KLRA-FM to specify the higher powered channel. Additionally, the petitioners seek the substitution of Channel 247C2 for Channel 244A at De Witt, Arkansas, and modification of the license for Station KDEW-FM accordingly.[4] Petitioners state that they desire to provide expanded coverage FM service and that they will expeditiously apply for the channels, if allotted.

2. A staff engineering analysis reveals that Channel 243C3 can be substituted for Channel 243A at England, consistent with the minimum distance separation requirements of the Commission's Rules, using the petitioners' suggested site 15.3 kilometers (9.5 miles) west[5] of the community, to avoid a short-spacing to Station KBHS-FM, Channel 244A, Hot Springs, Arkansas.[6] Petitioners' suggested site also avoids a conflict with Channel 245A at Maumelle, Arkansas, as well as an application filed therefor.[7] Additionally, Channel 247C2 can be allotted to De Witt at a restricted site 12.7 kilometers (7.9 miles) southwest[8] of the community, consistent with the Commission's technical rules to avoid a short-spacing to Station KQUS-FM, Channel 248C1, Hot Springs, Arkansas,[9] and to a proposal to allot Channel 247A at Bastrop, Louisiana, in MM Docket No. 89-85.[10]

3. We believe that the public interest would be served by proposing the substitution of Channel 243C3 for Channel 243A at England, Arkansas, and the substitution of Channel 247C2 for Channel 244A at De Witt, Arkansas, since this would provide a first wide area coverage FM service at each community. We shall also propose to modify petitioners' licenses for Stations KLRA-FM and KDEW-FM, England and De Witt, to specify operation on Channels 243C3 and 247C2, respectively.[11] Pursuant to the provisions of Section 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest for use of the channels at either community, nor require that the petitioners demonstrate the availability of an additional equivalent channel at England or De Witt.

4. Accordingly, we seek comments on the proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

	Channel No.	
City	Present	Proposed
De Witt, Arkansas	244A	247C2
England, Arkansas	243A	243C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **September 10, 1990,** and reply comments on or before **September 25, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners and their consultant, as follows:

Quadras, Inc.
Diamond State
Broadcasting, Inc.
Attn: Willie R. Harris
P.O. Box 40
England, AR 72046

and

Paul Reynolds
415 North College St.
Greenville, AL 36037
(Consultant)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTES

[1] Diamond is also the licensee of Station KLRA-AM, England, Arkansas.

[2] Quadras is also the licensee of Station KDEW-AM, De Witt, Arkansas.

[3] Diamond and Quadras advise that the England and DeWitt AM and FM facilities of Stations KLRA and KDEW are commonly owned. Therefore, they shall be jointly identified herein as "petitioners."

[4] Although the petitioners presented two other optional plans at De Witt for Station KDEW-FM on either Channel 247C3 or 247A, they expressly noted such alternate proposals should be considered only in the event Channel 247C2 cannot be substituted for Channel 244A.

[5] Coordinates used for Channel 243C3 at England, Arkansas, are 34-30-58 and 92-07-45.

[6] Coordinates at the licensed site of Station KBHS-FM are 34-32-01 and 93-03-24.

[7] Coordinates for Channel 245A at Maumelle are 34-51-43 and 92-24-12; coordinates at the applicant's specified site for Channel 245A are 34-49-48 and 92-22-42 (File No. BPH-871109MG).

[8] Coordinates used for Channel 247C2 at De Witt, Arkansas, are 34-12-20 and 91-25-18.

[9] Coordinates at the licensed site of Station KQUS-FM are 34-24-11 and 93-07-13.

[10] Coordinates used for proposed Channel 247A at Bastrop are 32-46-48 and 91-54-48.

[11] In light of the common ownership discussed *supra* note 3, a staff review was undertaken to determine whether the proposals to upgrade Station KLRA-FM at England and Station KDEW-FM at De Witt would violate the Commission's radio "duopoly" rule, which prohibits the common ownership of two or more commercial FM stations whose predicted 3.16 mV/m contours overlap. *See* 47 C.F.R. § 73.3555(a)(2). Our analysis reveals that there would be no overlap of the 3.16 mV/m contours of the England and De Witt stations if they were upgraded on Channel 243C3 and Channel 247C2, respectively.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-369

In the Matter of

Amendment of Section 73.202(b), RM-6847
Table of Allotments,
FM Broadcast Stations.
(Twin Lakes, Iowa)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 29, 1990; Released: July 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Twin Lakes Broadcasting, Inc. (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 6630 (1989), proposing the substitution of Channel 290C3 for Channel 288A at Twin Lakes, Iowa, and the modification of its license for Station KTLB to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. Upon further review of this proposal, we have found that the allotment of Channel 290C3 to Twin Lakes conflicts with that portion of the counterproposal filed by Dwaine F. Meyer ("Meyer") in MM Docket 89-264 which requests the substitution of Channel 290A for Channel 285A at Perry, Iowa, in order to substitute Channel 287C2 for Channel 288A at Chariton, Iowa. We have further found that the allotment of Channel 287C2 at Chariton conflicts with the request of Jomast Corporation ("Jomast") to substitute Channel 285C2 for Channel 285A at Oskaloosa, Iowa, by substituting Channel 287A for Channel 285A at Perry, Iowa. However, the conflict between the Oskaloosa, Chariton, Perry, and Twin Lakes proposals have been resolved by substituting Channel 269A for Channel 285A at Perry. *See Report and Order*, MM Docket 89-41, 5 FCC Rcd 1886 (1990).

3. We believe the public interest would be served by substituting Channel 290C3 for Channel 288A at Twin Lakes because it could enable Station KTLB to increase its coverage area. As proposed, we will also modify petitioner's license for Station KTLB to specify operation on the higher powered channel. Channel 290C3 can be allotted to Twin Lakes in compliance with the Commission's minimum distance separation requirements and can be used at Station KTLB's present transmitter site.[1]

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 4, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Twin Lakes, Iowa	290C3

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Twin Lakes Broadcasting, Inc. for Station KTLB, Twin Lakes, Iowa, IS MODIFIED to specify operation on Channel 290C3, in lieu of Channel 288A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 42-32-09 and West Longitude 94-40-48.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-427

In the Matter of

Amendment of Section 73.202(b), RM-6914
Table of Allotments,
FM Broadcast Stations.
(Canton, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 9, 1990; Released: July 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7195 (1989), issued in response to a petition filed by Bick Broadcasting Company (petitioner), requesting the substitution of FM Channel 272C3 for Channel 272A at Canton, Missouri. Petitioner also requested modification of its license for Station KBXB (formerly Station KQCA) to specify operation on the higher class channel. Petitioner filed supporting comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of FM Channel 272C3 for Channel 272A at Canton, Missouri, since it could provide the community with its first wide coverage area FM service. The substitution can be made in compliance with the minimum distance separation requirements of Section 73.207 of the Commission's Rules at a site 3.7 kilometers (2.3 miles) southwest of the community in order to avoid a short-spacing to Station WRMJ(FM), Channel 272A, Aledo, Illinois.[1]

3. As requested, we are authorizing a modification of petitioner's license for Station KBXB, Canton, Missouri, to specify operation on Channel 272C3 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 4, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Canton, Missouri	272C3

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the license of Station KBXB, Canton, Missouri, IS MODIFIED to specify operation on Channel 272C3 in lieu of Channel 272A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 272C3 are 40-06-13 and 91-33-04. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-28

In the Matter of

Amendment of Section 73.202(b),	RM-5896
Table of Allotments,	RM-6345
FM Broadcast Stations.	
(Weed and Mount Shasta, California)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 29, 1990; Released: July 18, 1990

By the Deputy Chief, Policy and Rules Division:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 3 FCC Rcd 663 (1988), issued in response to a petition for rule making filed on behalf of Florence M. Gaskey ("Gaskey"), licensee of Station KWHO(FM), Channel 265A, Weed, California, proposing the substitution of Channel 272C1 for Channel 265A at Weed and modification of the license accordingly. Gaskey filed supporting comments. Shasta Cascade Broadcasting Corp ("SCBC"), licensee of Station KEDY(FM), Channel 237A, Mt. Shasta, California, filed a counterproposal[2] requesting the substitution on Channel 272C1 for Channel 237A, and concurrent modification of its license. Gaskey filed opposition comments to SCBC's counterproposal. Gaskey and SCBC each filed reply comments. Gaskey also filed a supplemental statement. [3]

2. In response to the *Notice*, SCBC counterproposed the use of Channel 272C1 at Mt. Shasta and modification of its license for Station KEDY(FM) to specify the higher powered channel. The distance between the reference coordinates used for Weed and Mt. Shasta is 5.6 kilometers,[4] whereas 245 kilometers is required in this instance.[5] Thus, the proposals are mutually exclusive. In support of its proposal, SCBC questions the ability of Gaskey to provide line-of-sight coverage to Weed from the preferred site specified for Station KWHO(FM). Further, SCBC questions whether a station that has been inoperative for an extended period, like KWHO(FM), can be modified.[6]

3. Gaskey filed reply comments to SCBC's counterproposal, remarking that the Commission granted Station KWHO(FM) authority to remain silent until an acceptable transmitter site could be secured from which a 70 dBu signal could be delivered over Weed. In this regard, Gaskey states that a modification application specifying a new transmitter location for Station KWHO(FM) to alleviate the minimum signal intensity concerns was accepted for filing (BPH-860305IA).[7] Moreover, Gaskey advises that equivalent Channel 300C1 can be allotted to Mt. Shasta at the present site of Station KEDY(FM) to satisfy SCBC's expression of interest.

4. SCBC's reply comments reiterate its earlier comments regarding the status of Station KWHO(FM) and the site availability issue. Although SCBC attempts to introduce matters related to Gaskey's alleged intentions in pursuing the Weed modification, they are not appropriate for consideration at the rule making level, and will not be considered. SCBC asserts that on a comparative basis, Mt. Shasta should receive Channel 272C1 since it is the larger of the two communities, and urges that additional channels are available to Mt. Shasta in the event there are other interests in that community.

DISCUSSION

5. The Weed and Mt. Shasta proposals are mutually exclusive since they are separated by less than the 245 kilometers required between Class C1 co-channel allotments. Moreover, each proponent seeks a nonadjacent modification. Section 1.420 of the Commission's Rules states that a station may be upgraded on a nonadjacent higher-powered channel only where no other party expressed an interest in the use of the channel, or if there is an additional equivalent channel available for use by such other interested parties. In the instant case, as announced in the *Notice*, Gaskey advised that additional equivalent channels are available in the event expressions of interest in the Weed proposal were advanced.

6. In response to SCBC's counterproposal requesting the use of Channel 272C1 at Mt. Shasta, it has been demonstrated that Channel 300C1 is available at the preferred site of Station KEDY(FM). Although SCBC expressed a preference for Channel 272C1, it should note that paragraph 3 of the Appendix to the *Notice* in this proceeding advised that filing of a counterproposal may result in the allotment of channels of an equivalent class to those requested. Also, the Commission may allot a different channel of the same class on its own motion in the course of a rule making proceeding to ensure the most efficient use of the spectrum. *See Selma and Georgianna, AL*, 4 FCC Rcd 7584 (1989); *Williston and Micanopy, FL*, 50 RR 2d 1425 (1982). Although the Public Notice announcing the filing of SCBC's counterproposal did not state that it sought modification of its license for Station KEDY(FM) to a nonadjacent higher-powered channel, and did not advise interested parties that they could file competing expressions of interest, we have determined that Channel 276C1 is also available to Mt. Shasta as an equivalent channel.[8] In view of the foregoing, both the Weed and Mt. Shasta proposals can be accommodated without the need for a community comparison.

7. Although SCBC questioned Gaskey's ability to provide a 70 dBu signal over Weed from her preferred site for Channel 272C1, we note that the construction permit issued to Gaskey for Station KWHO(FM) to operate on Channel 265A is at the same site. Therefore, and in view of the fact that SCBC has not demonstrated to the contrary, it must be concluded that Gaskey's preferred site is considered technically acceptable to provide adequate service to Weed.

8. We believe the public interest would be served by substituting Channel 272C1 for Channel 265A at Weed, California, and by substituting Channel 300C1 for Channel 237A at Mt. Shasta, California, since each could provide a first wide coverage area FM service to the respective communities. Therefore, and in accordance

with the provisions of Section 1.420(g) of the Commission's Rules, we are modifying herein the licenses of Station KWHO(FM) to specify operation on Channel 272C1 in lieu of Channel 265A at Weed, California, and Station KEDY(FM) to specify operation on Channel 300C1 in lieu of Channel 237A at Mt. Shasta, California. As indicated, *supra*, Channel 272C1 can be allotted to Weed at the currently authorized site of Station KWHO(FM). Channel 300C1 can be allotted to Mt. Shasta at the licensed site specified for Station KEDY(FM).[9]

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 4, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Mt. Shasta, California	300C1
Weed, California	272C1

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Shasta Cascade Broadcasting Corporation for Station KEDY(FM), IS MODIFIED effective **September 4, 1990,** to specify operation on Channel 300C1 in lieu of Channel 237A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Florence M. Gaskey for Station KWHO(FM), IS MODIFIED effective **September 4, 1990,** to specify operation on Channel 272C1 in lieu of Channel 265A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTES

[1] The community of Mt. Shasta, California, has been added to the caption.

[2] Public Notice of the counterproposal was given April 22, 1989, Report No. 1726.

[3] Gaskey's statement was filed after the period specified for filing comments in the proceeding. The Commission's Rules do not contemplate the filing of pleadings beyond the comment period, unless specifically requested. However, the comment was served on SCBC and merely contained information of which the Commission would take official notice in any event. Therefore, it has been accepted.

[4] The coordinates of the authorized site for Station KWHO(FM), Weed, are 41-21-12 and 122-15-35, and for Station KEDY(FM), Mt. Shasta, 41-19-09 and 122-18-35.

[5] The spacing requirements are based on the separation requirements prior to the revision of the Commission's Rules in MM Docket No. 88-375, 4 FCC Rcd 6375 (1989), which, *inter alia*, increased the maximum power for Class A facilities to 6 kW and adjusted the minimum distance spacing requirements accordingly. *See* 47 CFR § 73.213(c).

[6] Station KWHO(FM) had been silent pursuant to Commission authority, but is presently operating pursuant to automatic program test authority. Gaskey has filed an application (BLH-891127KB) for a license to cover her construction permit (BPH-860305IA), specifying the new transmitter site for Station KWHO(FM).

[7] Coordinates at the construction permit site for Station KWHO(FM) are those under consideration herein at 41-21-12 and 122-15-35.

[8] Coordinates for Channel 276C1 at Mt. Shasta are 41-08-18 and 122-37-28. However, since we did not receive any other expressions of interest in an allotment at Mt. Shasta, we will not allot Channel 276C1. Rather, it may be requested in the context of a new rule making proceeding.

[9] Coordinates for Channel 300C1 at Mt. Shasta are 41-19-09 and 122-18-35.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-337

In re Applications of

GEORGIA PUBLIC TELECOMMUNICATIONS COMMISSION	File No. BPED-870727MA
LOWELL MAZE JACKSON	File No. BPH-870727MD
IVAN M. MILES	File No. BPH-870727ME
JOHNSON BROADCASTING, INC.	File No. BPH-870727MF
PAUL UHRY MAZO d/b/a MAZO RADIO CO.	File No. BPH-870727MJ
ROBERT W. ROUNSAVILLE	File No. BPH-870727MK
SOUTHERN RADIO SERVICES, INC.	File No. BPH-870727ML
ROSWELL BROADCAST COMMUNICATIONS, LTD.	File No. BPH-870727MM
NEW GEORGIA BROADCASTING, LTD.	File No. BPH-870727MO
EATHEL HOLLEY	File No. BPH-870727MQ

For Construction Permit for a New FM Station on Channel 298A in Roswell, Georgia

MEMORANDUM OPINION AND ORDER

Adopted: July 3, 1990; Released: July 18, 1990

By the Commission:

1. Before the Commission for consideration are a Review Board Memorandum Opinion and Order, *Georgia Public Telecommunications Commission*, FCC 80R-28 (Rev. Bd. Apr. 20, 1990); and an Application for Review filed April 27, 1990 by Johnson Broadcasting, Inc. (JBI).[1]

2. In Orders, *Georgia Public Telecommunications Commission*, FCC 89M-2546 (ALJ Oct. 26, 1989) and FCC 90M-238 (ALJ Feb. 8, 1990), the ALJ ordered JBI to produce for discovery a letter dated July 10, 1989 from JBI to its attorney concerning amendments to its application. In *Georgia Public Telecommunications Commission*, FCC 90R-28, *supra*, the Board denied JBI's appeal of the production requirement.[2]

3. In its Application for Review JBI argues that the ALJ has arbitrarily subjected it to different discovery procedures than those required of the other parties in this proceeding, that the July 10, 1989 letter is protected by the attorney-client privilege, and that, while the letter was disclosed to Sonrise Management, the disclosure did not constitute a waiver of the privilege.

4. Based on our review of the letter and the pleadings before us, we need not reach the question concerning alleged disparate treatment because we find that JBI has waived its right to claim the attorney-client privilege by virtue of its having sent a copy of the letter to Dr. Eugene Savage of Sonrise Management. [3] Absent a right to claim the privilege, the July 10, 1989 letter is subject to the same discovery procedures as any other non-privileged document.

5. The attorney-client privilege protects confidential communications by a client to his lawyer for the purpose of obtaining legal advice. Because the privilege protects only communications that are made in confidence, disclosure of an otherwise privileged communication to a third person who lacks a commonality of interest with either the client or his attorney generally rebuts the intent for confidentiality on which the privilege rests. *Hodges, Grant & Kaufmann v. U. S. Government*, 768 F.2d 719, 720-21 (5th Cir. 1985). In this regard, it is generally recognized that any voluntary disclosure of information constitutes a waiver of the right to claim that the information is protected by the privilege. *Weil v. Investment / Indications Research Management, Inc.*, 647 F.2d 18, 23 (9th Cir. 1981); *United States v. American Tel. and Tel. Co.*, 642 F.2d 1285, 1299 (D.C. Cir. 1980).[4] In light of the disclosure of the letter to Sonrise Management, the burden is on JBI to establish a relationship with Sonrise consistent with its claim of privilege. *United States v. Kovel*, 296 F.2d 918, 923 (2nd Cir. 1961).

6. JBI asserts that "Sonrise originally formed the group and still had the money of JBI's principals." JBI Application for Review, filed April 27, 1990 p. 10. Thus, it contends that a disclosure to Sonrise would no more constitute a waiver of the privilege than would a letter between a client and an accountant in a litigated matter, citing *United States v. Kovel, supra*. Citing *Hodges, Grant & Kaufmann, supra* at 721, it argues that the privilege was not waived because the letter was "shared with a third person who has a common legal interest."

7. The authorities cited by JBI do not support its contention that the disclosure to Sonrise was not a waiver. In *United States v. Kovel, supra*, the court found that disclosure to an accountant was not a waiver when the accountant worked in the client's attorney's office, his function was to help the attorney prepare for litigation before the Internal Revenue Service, and the communication to the accountant was essential to the preparation for the client's litigation. In the instant proceeding there is no indication that sending a copy of the letter to Sonrise was essential to the provision of legal services to JBI. Moreover, when a communication serves an independent business purpose, and advice to be given by the third party is not essential to the attorney's legal analysis, disclosure of the communication constitutes a waiver. *In Re Bretto*, 231 F. Supp 529 (D. Minn. 1964) (communications to a banker who was providing estate planning services for client's attorney was not protected because the advice provided by the banker did not involve legal analysis).

8. In relying on *Hodge, Grant & Kaufmann, supra*, JBI does not identify a "common interest" that would exempt the disclosure of the letter from a waiver of the attorney-client privilege. In that case, the court held that a communication could be protected if it was divulged to a joint client of the attorney, or the client's agent or alter ego. 768 F.2d at 721 (citing *Wilson P. Abraham Construction Corp. v. Armco Steel Corp.*, 559 F.2d 250, 253 (5th Cir. 1977)).[5] JBI has not shown a commonality of interest with Sonrise by virtue of Sonrise's status as a joint client, its agent or its alter ego. Nor is there any showing otherwise that Sonrise had a relationship with JBI that would require it to hold communications from JBI in confidence. Thus, JBI's disclosure of the letter to Sonrise constituted a waiver of its right to claim that the contents of the letter are protected by the attorney-client privilege.

9. ACCORDINGLY IT IS ORDERED, That the Application for Review filed April 27, 1990 by Johnson Broadcasting, Inc. IS DENIED.

10. IT IS FURTHER ORDERED, That the Stay imposed by *Georgia Public Telecommunications Commission*, FCC 90I-39, released May 14, 1990 IS RESCINDED and the presiding Administrative Law Judge in this proceeding IS DIRECTED to take such steps as are necessary to compile a full record with respect to the July 10, 1989 letter.

11. IT IS FURTHER ORDERED, That the informal request for expedition, filed May 10, 1990 by Robert W. Rounsaville, IS GRANTED to the extent indicated herein, and in all other respect IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Also before the Commission is an Opposition to Application for Review, filed May 10, 1990 by Robert W. Rounsaville and Ivan M. Miles. In a covering letter, which we will treat as an informal request, Rounsaville seeks expedited consideration of the Application for Review. Consistent with the requirements of the Commission's business we have given expedited consideration to JBI's Application for Review.

[2] The Board's order denied JBI's appeal on the ground that JBI had not followed the procedures established for the protection of documents subject to the attorney-client privilege. However, we do not believe that this circumstance is dispositive in light of its submission of the letter to the ALJ for *in camera* inspection and the fact that the letter on its face was from JBI to its attorney. Thus, we shall address the merits of JBI's arguments as reflected below.

[3] On May 11, 1990 JBI provided a copy of the letter in question to the Office of General Counsel for in *camera* inspection.

[4] The attorney-client privilege is strictly construed because it impedes the full and free discovery of the truth. *Weil v. Investment/Indications, supra* at 24.

[5] Wilson, moreover, dealt with an exception for co-defendants who were preparing a joint defense. Here there is no indication that JBI and Sonrise were preparing a joint defense or that the letter was part of the preparation for a joint defense.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-438

In re Application of

PORT HURON FAMILY RADIO, INC. File No. BPH-830325AE

For Construction Permit for a
New FM Station
Port Huron, Michigan

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990; Released: July 18, 1990

By the Commission:

1. In its decision in this case, *Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532 (1989), the Review Board concluded that Port Huron Family Radio, Inc. (Family) was financially unqualified because it did not have, at the time it filed its application and certified its financial qualifications, a balance sheet or other documentary evidence (such as a financial statement) demonstrating that the person proposing to lend the funds for constructing and operating its station for three months without revenue, had sufficient net liquid assets to meet that loan commitment. Now before us is an Application for Review filed April 24, 1989 by Family.[1] For the reasons that follow, we find that Family was financially qualified when it certified its financial qualifications, and that a grant of its application will serve the public interest.

2. In *Northampton Media Associates*, 4 FCC Rcd 5517 (1989), which was decided after the Board's decision, the Commission held that applicants need not have in hand such documentation when certifying their financial qualifications; instead, they can prepare and submit such documentation after certification when requested to do so by the Commission. *Id.* at 5518-5519 ¶ 14.[2] Such documentation must reflect that the applicant had reasonable assurance of the lender's financial ability to provide the necessary funds when it certified its financial qualifications. To do this, the applicant must provide substantial and reliable evidence (such as a financial statement or balance sheet) that the lender -- when it is a person and not a financial institution -- had sufficient net liquid assets on hand to meet its loan commitment to the applicant. Moreover, where that loan agreement is oral such as in this case, the existence of such an agreement at the time of financial certification must be established by both the applicant and lender via uncontroverted affidavits and/or testimony at hearing. [3] *Id.* at 5519 ¶¶ 15-17.

3. In view of the foregoing, the test applied by the Board for determining whether Family had reasonable assurance at the time of certification -- i.e. contemporaneous written documentation -- is no longer controlling under Commission precedent.[4] Consequently, by Order, FCC 90I-13 (Gen. Counsel released Feb. 7, 1990), Family was directed to submit documentation demonstrating that the person it had relied on for financing the construction and operation of its station for three months without revenue had the financial ability to meet that loan commitment at the time Family certified its financial qualifications. The Mass Media Bureau's comments on the above showing were also solicited. Both Family's requested showing and the Bureau's comments have been submitted and, for the reasons that follow, we agree with the Bureau that Family has shown that it had reasonable assurance of its financial qualifications when it so certified.

4. The record reveals that Family's estimate of the cost of constructing and operating its proposed station for three months without revenue was $168,867, in addition to estimated legal expenses of $30,000. Thus, Family's total cost estimate was $198,867. To meet those estimated costs, it is undisputed that Family relied on an oral loan agreement between itself and George Clark -- a friend of Martin Doorn, who is a principal of Family and who certified the applicant's financial qualifications. Both Clark and Doorn confirmed the existence of that loan agreement in their respective testimony in this case. *See Port Huron Family Radio*, 3 FCC Rcd 5562, 5563 ¶¶ 11-13 (ALJ 1988). Regarding Clark's financial ability to make such a loan to Family, the record is also undisputed that Doorn discussed the matter with Clark's former accountant and was assured that Clark had the financial means to do so. *Id.* at 5563-5564 ¶ 14.

5. In its recent submission, Family has submitted a reconstructed financial statement reflecting Clark's financial condition as of March 1983, the time when Family's financial certification was made. The statement reveals that Clark had at that time assets valued at $531,500 and liabilities of $56,000 ($14,000 in current and $42,000 in long-term liabilities), resulting in a net worth of $475,500. Also, in a declaration under penalty of perjury, Clark states that he relied on the following assets to finance his loan to Family:

Cash	$ 30,000
Vacant Land	42,500
Excess Construction Equipment	101,000
Accounts Receivable	90,000
	$263,500

As to the listed value of the vacant land, Clark has submitted a letter from a real estate broker, indicating that he appraised that property in December 1982 and determined that its fair market value was $42,500. Regarding the estimated value of the construction equipment, Clark has submitted a copy of a March 1983 letter from a construction equipment company which states that the quick sale value of the equipment was $101,000. Also submitted is a letter from a public accountant who prepared Clark's reconstructed financial statement. The accountant states that the $90,000 accounts receivable indicated therein is based on Clark's best recollection of the information given him by his former accountant, who is now deceased. Because all of Clark's financial records prior to 1985 were destroyed in a flood, the accountant further states that she has reviewed Clark's accounts re-

ceivable for the last five years and found them to average at $73,400, with a 97% collection rate within a 30 day billing.

6. Before determining whether Clark's liquid assets were adequate to finance his loan commitment to Family at the time of certification, it is necessary to make certain adjustments in the respective valuations of some of those assets because of Commission precedent.[5] Hence, the valuation of those assets, as adjusted, and the net funds available from those assets are as follows:

Cash	$ 30,000
Vacant Land	28,333
Construction Equipment	75,750
Accounts Receivable	67,500
Total Funds Available	$ 201,583
Less Current Liabilities	14,000
Net Funds Available	$ 187,583

Given the above showing, we conclude that the $187,583 available to Clark from his liquid assets was sufficient to cover his loan commitment to finance the $168,867 needed by Family to construct and operate the proposed station for three months without revenue.[6] Because Family has shown that it has paid its legal expenses as they have been incurred, such expenses have not been taken into consideration in determining Family's financial qualifications. *See Muncie Broadcasting Corp.*, 54 RR 2d 42 (1983).

7. In view of the foregoing, we find that Family has submitted probative evidence demonstrating that the person proposing to lend the necessary funds for constructing and operating its station for three months without revenue had sufficient net liquid assets to meet that loan commitment when it certified its financial qualifications; has established on the record of this proceeding the existence of a valid loan agreement upon which it relied for financing its proposed station; and, in view of the foregoing, has shown a reasonable basis for its financial certification. Accordingly, we conclude that Family was financially qualified when it certified its financial qualifications and that a grant of its application will serve the public interest.

8. ACCORDINGLY, IT IS ORDERED, That the Motion to Supplement Application for Review filed August 23, 1989 by Port Huron Family Radio, Inc. IS GRANTED, and the accompanying Supplement IS ACCEPTED.

9. IT IS FURTHER ORDERED, That the Application for Review filed April 24, 1989, as supplemented, IS GRANTED to the extent indicated herein and IS DENIED in all other respects.

10. IT IS FURTHER ORDERED, That the Review Board's decision in this case, *Port Huron Family Radio, Inc.*, 4 FCC Rcd 2532 (1989), IS MODIFIED to the extent indicated herein.

11. IT IS FURTHER ORDERED, That the above-captioned application (File No. BPH-830325AE) of Port Huron Family Radio, Inc. IS GRANTED, and that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Also before us are: a Motion to Supplement Application for Review and the accompanying Supplement filed August 23, 1989 by Family; a Supplemental Financial Showing filed March 23, 1989 by Family; and Comments thereon filed April 8, 1990 by the Mass Media Bureau.

[2] The financial certification process has been modified for applicants filing after the effective date of the amended Form 301. *Revision of Application for Construction Permit for Commercial Broadcast Station*, 4 FCC Rcd 3853 (1989).

[3] After the Board's decision and the Commission's decision in *Northampton*, the Board approved a settlement agreement between Family and L&K Broadcasting, Inc., which resulted in the dismissal of the latter's application. *Port Huron Family Radio, Inc.*, 4 FCC Rcd 6144 (1989).

[4] *Las Americas Communications, Inc.*, 1 FCC Rcd 786 (Rev. Bd. 1986), which was relied upon by the Board in this case, was effectively overruled by *Northampton Media Associates, supra*, and thus Las Americas and its progeny are no longer good law.

[5] Because the net proceeds received by a seller of real estate are normally less than fair market value, the Commission has reduced the market valuation by as much as one-third. *See Dodge-Point Broadcasting Co.*, 11 FCC 2d 751 (1968). It is also Commission practice to credit only 75% of the accounts receivable when they are aged. *See Kaiser Broadcasting Corporation*, 62 FCC 2d 246 (1977). Moreover, as the Bureau suggested, we have also adjusted the estimated value of Clark's used construction equipment.

[6] If the smaller accounts receivable average of $73,400 is used, $55,050 of that amount would be considered liquid assets from Clark's accounts receivable. Hence, the valuation of Clark's total liquid assets would be $175,133 as of March 1983. That amount would likewise be adequate to cover Clark's loan commitment to Family.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-269

In re Application of

ST. CROIX WIRELESS CO.
A Limited Partnership

File No. BPH-850711QD

For Construction Permit
for a New FM Station at
Christiansted, Virgin Islands

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990; **Released: July 18, 1990**

By the Commission:

1. Before the Commission for consideration are a Memorandum Opinion and Order, *St. Croix Wireless Co.*, 3 FCC Rcd 4073 (1988); a Petition for Reconsideration and Motion for Stay, filed August 1, 1988, and supplemented on August 9, 1988 by St. Croix Wireless Co. (SCWC), and an Opposition filed August 15, 1988 by Sugarbird Communications.

2. In *St. Croix Wireless Co.*, FCC 87M-2123 (Sept. 8, 1987) the ALJ dismissed Sugarbird's application for failure to prosecute. The ALJ separately approved a settlement between SCWC and the other remaining applicants and terminated the proceeding. *St. Croix Wireless Co.*, FCC 87M-4124 (Sept. 8, 1987). The Review Board rejected Sugarbird's appeal of the ALJ's dismissal of its application. *St. Croix Wireless Co.*, 3 FCC Rcd 1046 (1988). Sugarbird then appealed to the Commission.

3. The Commission concluded that the ALJ should have accepted Sugarbird's late-filed notice of appearance. It therefore reinstated Sugarbird's application and approved the settlement agreement previously filed by Sugarbird and SCWC with the ALJ as part of the universal settlement of this case. *St. Croix Wireless Co.*, 3 FCC Rcd 4073 (1988). Under the terms of the settlement, within 30 days after a decision approving SCWC's application becomes final, SCWC is obligated to pay Sugarbird $12,500 for the dismissal of its application and its agreement to forego further prosecution of its application. SCWC now argues that the Commission should grant reconsideration of its order approving the settlement agreement with Sugarbird, because operation on the FM channel allocated to Christiansted will conflict with an FM station operating on the same channel in the British Virgin Islands, and because SCWC will be unable to build its proposed station until the conflict with that station is resolved. It asserts that the Commission was unaware of the conflict with the British Virgin Islands station when it approved the settlement agreement on July 1, 1988.

4. In support of its Petition for Reconsideration and Motion for Stay, SCWC submitted an affidavit from its principal, John T. Galanses, detailing his efforts first to obtain a construction permit and later to clear up the conflict with the British Virgin Islands station. Mr. Galanses asserts that he became concerned in February 1988, five months after the release of the ALJ's order granting SCWC's application, when SCWC had not received a construction permit. He then contacted the Mass Media Bureau and was advised of the conflict with the British Virgin Islands station. He was told that SCWC's permit would be modified to specify a new channel. The Bureau, however, has not initiated a rule making to specify a new channel for Christiansted. Mr. Galanses contacted the Mass Media Bureau on April 6, May 10 and July 22, 1988, and on each instance was told that the conflict had not been resolved. Affidavit attached to Petition for Reconsideration and Stay at 2.

5. SCWC's request for reconsideration will be denied. Sugarbird filed its appeal with the Commission, requesting reinstatement of its application and approval of its previously filed settlement agreement with SCWC, on April 8, 1988. SCWC did not file any pleading concerning Sugarbird's appeal or the request for approval of the settlement agreement. However, SCWC's own affidavit makes it clear that SCWC became aware of the conflict with the British Virgin Islands station in February 1988 and that the conflict had not been resolved by the time Sugarbird sought approval of its settlement agreement with SCWC. Moreover, in spite of the fact that SCWC's application had already been granted by the ALJ and that it would be obligated to pay Sugarbird $12,500 upon approval of the settlement agreement, SCWC made no effort to inform the Commission of the conflict with the British Virgin Islands station that it was working with the Mass Media Bureau to resolve until after the Commission approved the settlement agreement.

6. The arguments in SCWC's request for reconsideration are untimely. SCWC has known about the conflict with the British Virgin Islands station since February 1988. Thus, SCWC does not rely on new information or on facts previously unknown to SCWC as required by the Commission's rules. 47 C.F.R. § 1.106(c)(1). Moreover, SCWC's petition asks the Commission to abrogate its obligations under the settlement agreement. The agreement is a private contractual arrangement freely entered into by the parties. *Anax Broadcasting, Inc.*, 88 FCC 2d 608, 611 ¶ 10 (1981). That agreement obligated SCWC to pay Sugarbird $12,500 in return for foregoing further prosecution of Sugarbird's application, without providing for contingencies that could prevent construction of its proposed station. Although the Commission is authorized to approve settlement agreements, the question of whether a valid and binding contract exists is one of state contract law. *Ninety - Two Point Seven Broadcasting, Inc.*, 55 RR 2d 607, 610 ¶ 8 (1984). Thus, SCWC's arguments concerning whether the settlement agreement should be implemented provide no basis for a grant of reconsideration of our order approving that agreement.

7. ACCORDINGLY, IT IS ORDERED, that the Petition for Reconsideration and Motion for Stay[1] filed August 1, 1988 and supplemented on August 9, 1988 by St. Croix Wireless Co. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTE

[1] Under 47 C.F.R. § 1.44(e), a request to stay the effectiveness of any action by the Commission, if not filed as a separate pleading, will not be considered by the Commission. In any event, even if treated as properly filed, SCWC's request makes no showing warranting grant of a stay.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation,
Complainant,

v. File No. E-88-47

Southwestern Bell Telephone Company
Defendant.

ORDER

Adopted: July 3, 1990; Released: July 19, 1990

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. The parties to the above-captioned proceeding, MCI Telecommunications Corporation (MCI) and Southwestern Bell Telephone Company (SWB), have filed a "Stipulation for Dismissal" requesting that the Commission dismiss with prejudice all causes of action alleged in the proceeding. For the reasons set forth below, we grant the requested relief.

2. This proceeding was initiated by a formal complaint filed by MCI against SWB on February 9, 1989 alleging that SWB's charges for interstate access services for the period October 1, 1985 through December 31, 1986 produced earnings in excess of the Commission's prescribed rate of return and, therefore, were unlawful under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). SWB denied the allegations and moved to dismiss the complaint. On July 27, 1989, the Common Carrier Bureau (Bureau) issued an order directing SWB to show cause why it should not be required to pay damages to MCI as requested in the complaint. SWB filed a response to the show cause order on August 16, 1989, and MCI filed comments thereto on August 30, 1989.

3. On December 12, 1989, the Commission, in a Memorandum Opinion and Order[1] concluded that MCI had met its burden of establishing that SWB violated the Act by earning in excess of the Commission's prescribed rate of return and was liable to MCI to the extent that MCI could establish that it was damaged as a result of the violations. *MCI Telecomunications Corp. v. Pacific Northwest Bell Telephone Co., et al.*, 5 FCC Rcd 216 (1990). The Commission further ruled that MCI was entitled to pursue its damage claims in a supplemental complaint as provided in Section 1.722 of the Rules, 47 C.F.R. § 1.722.

4. On December 19, 1989, SWB and MCI filed the instant stipulation for dismissal which states that all claims in the complaint have been settled by the parties and further requests an order dismissing the complaint with prejudice.

5. On the basis of the statements contained in the parties' stipulation, we conclude that there are no longer issues in controversy regarding the complaint and the public interest would be served by terminating the proceeding.

6. Accordingly, IT IS ORDERED, pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the "Stipulation for Dismissal" filed by MCI Telecommunications Corporation and Southwestern Bell Telephone Company IS GRANTED and that the above-captioned complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] Before the Commission were ten complaints filed by MCI against local exchange carriers. Due to the similarity of the issues and arguments raised by the parties, the complaints were disposed of in a single order.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation,
Complainant,

v. File No. E-88-48

Wisconsin Bell Telephone Company
Defendant.

ORDER

Adopted: July 3, 1990; Released: July 19, 1990

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. The parties to the above-captioned proceeding, MCI Telecommunications Corporation (MCI) and Wisconsin Bell Telephone Company (Wisconsin Bell), have filed a Joint Motion requesting that the Commission dismiss with prejudice all causes of action alleged in the proceeding. For the reasons set forth below, we grant the requested relief.

2. This proceeding was initiated by a formal complaint filed by MCI against Wisconsin Bell on February 9, 1989 alleging that Wisconsin Bell charges for interstate access services for the period October 1, 1985 through December 31, 1986 produced earnings in excess of the Commission's prescribed rate of return and, therefore, were unlawful under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). Wisconsin Bell denied the allegations and moved to dismiss the complaint. On July 27, 1989, the Common Carrier Bureau (Bureau) issued an order directing Wisconsin Bell to show cause why it should not be required to pay damages to MCI as requested in the complaint. Wisconsin Bell filed a response to the show cause order on August 16, 1989, and MCI filed comments thereto on August 30, 1989.

3. On December 12, 1989, the Commission, in a Memorandum Opinion and Order[1] concluded that MCI had met its burden of establishing that Wisconsin Bell violated the Act by earning in excess of the Commission's prescribed rate of return and was liable to MCI to the extent that MCI could establish that it was damaged as a result of the violations. *MCI Telecomunications Corp. v. Pacific Northwest Bell Telephone Co., et al.*, 5 FCC Rcd 216 (1990). The Commission further ruled that MCI was entitled to pursue its damage claims in a supplemental complaint as provided in Section 1.722 of the Rules, 47 C.F.R. § 1.722.

4. On June 19, 1990, Wisconsin Bell and MCI filed the instant motion stating that all claims in the complaint have been settled and further requesting an order by the Commission dismissing the complaint with prejudice. On the basis of the statements contained in the parties' motion, we conclude that there are no longer issues in controversy regarding the complaint and the public interest would be served by terminating the proceeding.

5. Accordingly, IT IS ORDERED, pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the Joint Motion to Dismiss filed by MCI Telecommunications Corporation and Wisconsin Bell Telephone Company IS GRANTED and that the above-captioned complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] Before the Commission were ten complaints filed by MCI against local exchange carriers. Due to the similarity of the issues and arguments raised by the parties, the complaints were disposed of in a single order.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US SPRINT COMMUNICATIONS COMPANY
LIMITED PARTNERSHIP,
Complainant,

v. File No. E-89-379

SOUTHWESTERN BELL TELEPHONE
COMPANY,
Defendant.

ORDER

Adopted July 3, 1990; Released: July 19, 1990

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. On September 30, 1989, US Sprint Communications Company Limited Partnership (US Sprint) filed the above-captioned formal complaint against Southwestern Bell Telephone Company (Southwestern Bell) seeking reimbursement and "other appropriate relief" for interstate access charges levied by the defendant against US Sprint for the period October 1, 1985 through December 31, 1986. Southwestern filed an answer and motion to dismiss the complaint on November 2, 1989. Subsequently, on December 29, 1989, US Sprint filed a "Motion for Voluntary Dismissal" stating that the parties had negotiated a settlement of all claims "asserted or assertable" in the complaint proceeding and further requesting the Commission to dismiss the complaint with prejudice.

2. On the basis of the statements contained in the motion, we conclude that there are no longer issues in controversy regarding the complaint and that the public interest would be served by terminating the proceeding.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that US Sprint's "Motion for Voluntary Dismissal" IS GRANTED and that the above-captioned complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation,
Complainant,

v. File No. E-88-52

Michigan Bell Telephone Company
Defendant.

ORDER

Adopted: July 3, 1990; Released: July 19, 1990

By the Deputy Chief, Enforcement Division, Common Carrier Bureau:

1. The parties to the above-captioned proceeding, MCI Telecommunications Corporation (MCI) and Michigan Bell Telephone Company (Michigan Bell), have filed a joint motion requesting that the Commission dismiss with prejudice all causes of action alleged in the proceeding. For the reasons set forth below, we grant the requested relief.

2. This proceeding was initiated by a formal complaint filed by MCI against Michigan Bell on February 9, 1989 alleging that Michigan Bell charges for interstate access services for the period October 1, 1985 through December 31, 1986 produced earnings in excess of the Commission's prescribed rate of return and, therefore, were unlawful under Section 201(b) of the Communications Act, 47 U.S.C. § 201(b). Michigan Bell denied the allegations and moved to dismiss the complaint. On July 27, 1989, the Common Carrier Bureau (Bureau) issued an order directing Michigan Bell to show cause why it should not be required to pay damages to MCI as requested in the complaint. Michigan Bell filed a response to the show cause order on August 16, 1989, and MCI filed comments thereto on August 30, 1989.

3. On December 12, 1989, the Commission, in a Memorandum Opinion and Order[1] concluded that MCI had met its burden of establishing that Michigan Bell violated the Act by earning in excess of the Commission's prescribed rate of return and was liable to MCI to the extent that MCI could establish that it was damaged as a result of the violations. *MCI Telecomunications Corp. v. Pacific Northwest Bell Telephone Co., et al.*, 5 FCC Rcd 216 (1990). The Commission further ruled that MCI was entitled to pursue its damage claims in a supplemental complaint as provided in Section 1.722 of the Rules, 47 C.F.R. § 1.722.

4. On June 19, 1990, Michigan Bell and MCI filed the instant motion stating that all claims in the complaint have been settled and further requesting an order by the Commission dismissing the complaint with prejudice. On the basis of the statements contained in the parties' joint motion, we conclude that there are no longer issues in controversy regarding the complaint and the public interest would be served by terminating the proceeding.

5. Accordingly, IT IS ORDERED, pursuant to authority delegated under Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that the "Joint Motion to Dismiss" filed by MCI Telecommunications Corporation and Michigan Bell Telephone Company IS GRANTED and that the above-captioned complaint proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Howard M. Wilchins
Deputy Chief, Enforcement Division
Common Carrier Bureau

FOOTNOTE

[1] Before the Commission were ten complaints filed by MCI against local exchange carriers. Due to the similarity of the issues and arguments raised by the parties, the complaints were disposed of in a single order.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CONTEL OF THE WEST AAD 9-1944

Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules

OREGON-IDAHO UTILITIES, INC.

Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 1990; Released: July 23, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. Contel of the West, a wholly-owned subsidiary of Contel Corporation (Contel), and Oregon-Idaho Utilities, Inc. (OIU) have filed petitions seeking waivers of Part 36 of the Commission's Rules in conjunction with the sale by Contel to OIU of four telephone exchanges, Adrian, Jordan Valley, and Ridgeview, Oregon and South Mountain, Idaho. Contel's petition, filed on February 16, 1990, seeks a waiver of Section 36.125(f).[1] Sections 36.154(e)(1) and (2),[2] and the definition of "study area," contained in Part 36, Appendix-Glossary [3] of the Commission's Rules in order to modify its Idaho study area,[4] adjust certain jurisdictional allocation factors for local loop plant and local switching equipment, and recast certain historical data to reflect the characteristics of the Idaho study area after the sale. OIU's petition, filed on December 7, 1989, seeks a waiver of the definition of "study area," contained in Part 36, Appendix-Glossary of the Commission's Rules in order to establish two new study areas. For the reasons discussed below, we grant these waivers in part, and deny OIU's request in part.

2. The definition of study area contained in Part 36, Appendix-Glossary, of the Commission's Rules states that the boundaries of a study area shall be frozen as they were on November 15, 1984. Thus, both carriers request a waiver of that provision to remove the Adrian, Jordan Valley, Ridgeview and South Mountain exchanges from Contel's existing Idaho study area, and to establish new study areas for OIU that include these exchanges.

3. Contel requests permission to modify certain historical jurisdictional separations factors to reflect the modified study area configurations. Section 36.154 of the Commission's Rules prescribes the procedures to be followed in apportioning Exchange Line Cable and Wire Facilities, Category 1, between the state and interstate jurisdictions. Category 1 is first subdivided into three subcategories. Subcategory 1.1 consists of state private line and state WATS lines, subcategory 1.2 consists of interstate private line and interstate WATS lines, and subcategory 1.3 consists of subscriber or common lines that are jointly used for local exchange service and exchange access for state and interstate interexchange services. Sections 36.154(e)(1) and (2) define the procedures for the development of the interstate allocation factor known as the subscriber plant factor (SPF), which is used to determine the interstate portion of subcategory 1.3. The SPF is developed by use of calendar year 1981 subscriber line usage data. Section 36.154 of the Commission's Rules also reflects the Commission's decision to change the allocation factor for Subcategory 1.3 from SPF to 25 percent, and to phase in the change by 1993. The objective of the transition is to produce reasonable and fair results in conjunction with the Commission's access charge plan and allow the targeting of rate support to high cost areas. Under these rules the interstate SPFs were frozen at the 1981 levels until 1986, when the gradual transition to a 25 percent factor began.

4. Contel also requests waiver of Section 36.125(f) of the Commission's Rules. Section 36.125 sets forth the procedures to apportion Central Office Equipment (COE) Local Switching Equipment - Category 3. Beginning January 1, 1993, COE Category 3 investment for study areas will be apportioned on the basis of relative dial equipment minutes (DEM), i.e., the minutes of holding time of the originating and terminating local switching equipment. In order to diminish the effect of a significant shift in carriers' COE Category 3 investment from the interstate to the intrastate rate base in a single year, this rule provides for a transition period from 1988 to 1992. Section 36.125(f) defines the procedures for allocating COE Category 3 investment for study areas with less than 50,000 access lines. These procedures require the development of the transitional factor based, in part, on a composite allocator, calculated to reflect the year-end 1987 interstate allocation of COE categories 4,5,6, and 7 of the former Part 67.[5]

II. SUMMARY OF PETITIONS

5. In support of its request for a waiver of the definition of study area, Contel indicates that before the sale of the four exchanges, its Idaho study area had a total of 12,774 loops with an average loop cost of $477.98. After the sale, Contel maintains that its modified study area will have 12,414 loops, with an average loop cost of $490.44. It states that it received $101,247 per month in high cost support before the sale of the four exchanges, and it expects to receive $104,439 per month in high cost support after the sale. OIU's waiver indicates that there is no connection or relationship between OIU and Contel or any of its subsidiaries. OIU requests separate study areas for Oregon and Idaho, but it is not able to calculate the data separately for the two states at the present time. OIU estimates, however, that its average cost per loop for all exchanges is $371.00 annually, which yields monthly 1990 Universal Service Fund (USF) support of $3.81 per loop.[6] This estimate would equate to $1,372 per month in high cost support.[7]

6. Contel requests a waiver of Section 36.154(e)(1) and (2) to adjust the frozen interstate SPF for its new Idaho study area. In lieu of using its existing frozen 1981 SPF which includes the four exchanges, Contel proposes to use existing data to compute a new base year SPF[8] without these exchanges. Contel maintains that its pre-sale, frozen, 1981 interstate SPF was .49120, while after the sale of the four exchanges, its modified study area 1981 interstate SPF will be reduced to .47950. It notes that its 1989 transitional SPF before the sale was .37060 compared with .36475 after the sale.

7. Contel also requests a waiver of Section 36.125(f), to the extent necessary, to allow it to develop the required 1987 composite allocator based on investments in former Part 67 Categories 4,5,6, and 7 for its modified Idaho study area as it would have been calculated, without these exchanges.[9] Contel claims that its 1987 composite category 4,5,6, and 7 allocator before the sale was .379997, and after the sale it will change to .375148. Its pre-sale 1989 transitional allocator was .415012, and after the sale it will be .409353.

III. DISCUSSION

8. We have considered the petitioner's arguments and conclude that Contel should be allowed to reconfigure its study area boundaries to exclude the Adrian, Jordan Valley, Ridgeview, and South Mountain exchanges, to adjust the jurisdictional allocation factors for local loop plant and local switching for the new study area formed by exchanges remaining after the sale and to recast certain historical data necessary to reflect the new study area boundaries. We also find that OIU should be allowed to establish one new study area to contain the four exchanges it purchased from Contel. Accordingly, we waive the definition of "study area" set forth in Part 36, Appendix-Glossary, to this extent for both carriers and Sections 36.125(f), 36.154(e)(1) and (2) of the Commission's Rules for Contel to the extent discussed below.

9. The Commission requirement that study area boundaries be frozen is intended, generally, to prohibit companies "from setting up high cost exchanges within their existing service territory as separate companies to maximize high cost support."[10] There are instances of study area changes that do not conflict with this fundamental concern. These include the merging of two or more study areas into a single study area or changes in study areas that result from the purchase or sale of exchanges in arms-length transactions. In these cases, a waiver may be justified if there is minimal impact on USF support, and the carriers notify the state commissions which have regulatory authority over them of their intent to seek a waiver of the rules relating to study area boundaries. In that way, we can address any state concerns regarding proposed boundary changes.

10. In this case, there is no connection or relationship between OIU and Contel or any of Contel's subsidiaries. Contel received $101,247 per month high cost support for 1989, and it has indicated that it will receive $104,439 per month high cost support for the new study area in 1990, an increase of $3,192 per month for these loops. OIU estimates that it will receive $1,372 per month high cost support for its new loops. Consequently, the increase in USF support will be $4,564 per month or $54,768 per year. This represents less than a 4.5% increase of what Contel had been receiving. Furthermore, the Oregon Public Utility Commission and the Idaho Public Utilities Commission authorized OIU to acquire the four rural exchanges from Contel of the West. Thus, we believe that a waiver of the definition of "study area" set forth in Part 36, Appendix-Glossary, of the Commission's Rules to reflect the transfer of exchanges is justified. Therefore, Contel may modify its existing study area and OIU may establish one new study area for the four exchanges.[11]

11. Contel also indicates that with the deletion of the four exchanges from the existing Idaho study area, its SPF should be changed. It submits that the revised 1981 base year SPF for the modified study area would be .47950, compared with .49120 for the existing Contel Idaho study area. In addition, Contel notes that the composite SPF for 1989 for the modified study area would be .36475, compared with its current SPF of .37060. In either case, our rules call for a transition to .25 by 1993. Consequently, since the new SPF will have minimal effect on the assignment of costs between the state and interstate jurisdictions, we believe that a grant of the waiver of Sections 36.154(e)(1) and (2) of the Commission's Rules to the extent necessary to adjust the frozen interstate SPF for the modified Idaho study area is justified.

12. Contel also requests that it be allowed to develop the required 1987 composite allocator based on investments in former Part 67 Categories 4,5,6, and 7 for its modified Idaho study area as it would have been calculated, in the absence of the four exchanges in 1987. This revised composite allocator will then be utilized as a component in the interstate allocation factor, calculated in accordance with the procedures defined in Section 36.125. It submits that its 1987 composite allocator for Categories 4.5.6, and 7 for the modified study area would be .375148 compared with its current composite allocator of .379997. In addition, Contel claims that its 1989 Category 3 transitional allocator for the modified study area would be .409353, compared with its current transitional allocator of .415012. In either case, our rules call for a transition to DEM by 1993. Since the effect of the sale of these four exchanges in either case is approximately .005, a minimal effect on the assignment of Category 3 investment between the state and interstate jurisdictions will occur. Consequently, we believe a grant of the waiver of Section 36.125(f) of the Commission's Rules to the extent necessary to adjust the 1987 composite allocator for the modified study area is justified.

IV. ORDERING CLAUSE

13. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 C.F.R. §154(i), That Contel of the West's petition for waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the definition of "study area" set forth in Part 36, Appendix-Glossary, of the Commission's Rules IS GRANTED.

14. IT IS ALSO ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 C.F.R. §154(i), That Oregon-Idaho Utilities, Inc.'s petition for waiver of the definition of "study area" set forth in Part 36, Appendix-Glossary, of the Commission's Rules IS GRANTED to the extent set forth above, and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 C.F.R. §36.125(f).

[2] 47 C.F.R. §§36.154(e)(1) and (2).

[3] 47 C.F.R. §36, Appendix-Glossary.

[4] Contel's present study area for Idaho includes the Adrian, Jordan Valley, and Ridgeview exchanges located in Oregon. These exchanges had a community of interest with the South Mountain exchange located in Idaho. Consequently, all four exchanges were included in the same study area before November 15, 1984, and were subsequently frozen under the Commission's Rules as of November 15, 1984.

[5] Part 67 was replaced by Part 36 of the Commission's Rules effective January 1, 1988.

[6] OIU filed additional information concerning this purchase in its letter of April 3, 1990, in response to questions raised by the Accounting and Audits Division in its letter of January 31, 1990.

[7] OIU notes that it has 551 access lines, while Contel's statistics show 360 loops. It is our understanding that the 551 access lines include single exchange, multi-party exchange, private line, and WATS subscribers, of which 360 are counted as local exchange subscribers. In computation of USF, a carrier uses only its local exchange subscriber loop count. Therefore, in this case, 360 times $3.81 equals $1,372 USF per month for OIU.

[8] The new base year SPF will be adjusted to reflect the transition prescribed by Section 36.154(f) of the Commission's Rules.

[9] Contel would then recalculate its Category 3 investment in accordance with the procedures defined in Section 36.125.

[10] MTS and WATS Market Stucture, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325 at para. 65, (December 12, 1984) (*Joint Board Order*).

[11] We deny OIU's request to establish two new separate study areas, one for the 3 exchanges in Oregon and 1 for the exchange in Idaho. OIU has neither demonstrated the public interest nor explained the necessity for having two separate study areas. We believe that one study area for these four exchanges will maintain the *status quo* for areas with a community of interest.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE TELEPHONE COMPANIES — AAD 90-215

Request for Waiver of
Amortization Methodology
Requirement

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 1990; Released: July 23, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On February 9, 1990, GTE Service Corporation and its affiliated domestic operating companies (GTE) filed a petition for waiver requesting permission to use an amortization method that is different from the one prescribed for individual items of furniture and certain other tools and equipment in the Commission's *Reconsideration Order* in CC Docket 87-135.[1] For the reasons discussed in the succeeding paragraphs we grant GTE's request.

II. BACKGROUND

2. On July 22, 1988, the Commission issued a *Report and Order* which raised the expense limit for individual items of furniture and certain other tools and equipment from $200 to $500. Several parties filed petitions for reconsideration of the *Report and Order*. They urged the Commission to eliminate requirements to maintain detailed continuing property records for items costing between $200 and $500 that had been capitalized prior to raising the expense limits and to allow amortization of these items over the prescribed average remaining depreciable lives of the investment. The Commission's *Reconsideration Order* eliminated the requirement for carriers to maintain continuing property records for items costing between $200 and $500 that had been capitalized prior to the change in expense limits, and it required that these items be segregated and amortized over an eight year period. The *Reconsideration Order* also prescribed a specific method to be used to amortize the undepreciated investment in these items.

3. The method prescribed in the *Reconsideration Order* requires monthly credits to asset account subsidiary records and monthly debits to accumulated depreciation subsidiary records. The amounts are determined by dividing the subsidiary record balances by the number of months remaining to be amortized. The difference between the monthly debit and credit amounts is charged to Account 6565, Amortization Expense--Other.

III. SUMMARY OF PETITION

4. In its petition for waiver, GTE seeks permission to use an alternative methodology that it claims will produce the same results. GTE states that it would segregate the embedded balances and related accumulated depreciation as prescribed in the *Reconsideration Order*. The net book value of the segregated investment (asset cost less accumulated depreciation) would then be amortized over the eight-year amortization period by monthly credits to the accumulated depreciation accounts and monthly debits to the applicable amortization expense account. At the end of the amortization period, the assets and the related accumulated depreciation would then be equal. The investment would then be retired by crediting the investment accounts and debiting the accumulated depreciation accounts.

5. GTE claims that because of the characteristics of its mechanized system for dealing with taxes, implementing the method prescribed in the *Reconsideration Order* would involve unnecessary complications and costs. GTE explains that the prescribed method breaks a link between mechanized accounting and tax systems and thereby creates an unnecessary recordkeeping burden. GTE states that the method prescribed by the Commission would require keeping a "side record" for tax calculation purposes.

6. Interested parties were invited to file comments on or before March 22, 1990 and reply comments on or before April 2, 1990. No comments or reply comments were filed.

IV. DISCUSSION

7. We have reviewed the alternative method proposed by GTE and find that GTE's method produces the same results as prescribed in the *Reconsideration Order*. The net book values of the assets and the periodic amortization expenses are identical during the amortization period under either method.

8. Since GTE's method produces the same results, it would not serve any useful purpose to force GTE to incur any additional burden to satisfy the literal instructions of the *Reconsideration Order*. In fact, it is in the public interest to minimize regulatory burdens whenever it is possible. We will permit GTE to use the amortization methodology described in its petition.

V. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED that the Request for Waiver filed February 9, 1990, by GTE Service Corporation and its affiliated domestic operating companies IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Revision to Amend Part 31 Uniform System of Accounts for Class A and Class B Telephone Companies as it relates to the treatment of certain individual items of furniture and equipment costing $500 or less, 3 FCC Rcd 4464 (1988) (*Report and Order*); recon., 4 FCC Rcd 8229 (1989) (*Reconsideration Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

CONTACT EXPRESS, INC. File No. 26528-CD-P/L-01-87

For authority to construct facilities in the Public Mobile Service on Frequency 454.550 MHz for Station KNKK784 at Orlando, Florida

CONTINENTAL TELE-COMMUNICATIONS, INC. File No. 21413-CD-P/L-01-88

For authority to construct facilities in the Public Mobile Service on Frequency 454.550 MHz for Station KNKI625 at Orlando, Florida

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 1990; Released: July 23, 1990

By the Chief, Mobile Services Division:

1. Contact Express, Inc. ("Contact") filed its captioned application on September 29, 1987, seeking authority to construct a new base station for both one-way and two-way facilities on frequency 454.550 MHz at Orlando, Florida. Continental Tele-Communications, Inc. ("Continental") filed its captioned application on December 14, 1987, seeking authority to add a second transmitter location for a two-way facility on frequency 454.550 MHz at Orlando, Florida. The captioned applications were listed as electrically mutually exclusive.[1]

I. BACKGROUND

2. On March 13, 1989, Continental filed a request for comparative hearing for the captioned mutually exclusive applications pursuant to Section 22.33(c)(1) of the Commission's Rules.[2] No responsive pleading was filed to Continental's request. In support of its request, Continental says that it is prepared to demonstrate in a hearing that the public interest would be better served by the expansion of its Sumterville, Florida facility to include coverage in Orlando than by the Orlando-only service being proposed by Contact. According to Continental, based on a survey of its 53 Sumterville subscribers, 10 unidentified subscribers have a need for 41 units for expanded service in Orlando. In addition, Continental states that it has obtained held service orders from unidentified 15 potential subscribers for 49 units who do not currently use the Sumterville-only service because they need a Sumterville/Orlando wide-area service. Moreover, Continental asserts that its application proposes to serve a substantially greater area and population in the Orlando area than does Contact's application.

II. DISCUSSION

3. Continental has failed to demonstrate that it is eligible for a comparative hearing. Selection by lottery among mutually exclusive applicants is the general rule, and exceptions to the rule are strictly construed and enforced. *See, e.g., Metro Mobile Corporation*, 5 FCC Rcd 1040 (Mob. Serv. Div. 1990) ("Metro Mobile"); *Mobile Phone of Texas*, Mimeo No. 2728 (Mob. Serv. Div. released Feb. 22, 1985). Section 22.33(c)(1) requires that applicants requesting a comparative hearing satisfy certain requirements. Continental has satisfied one of these requirements because its proposed transmitter at Orlando is located within 40 miles of an existing Continental location at Sumterville and is for the same frequency.

4. Section 22.33(c)(1), however, further requires that a requesting applicant demonstrate a demand by existing subscribers for expanded service. We find that Continental's showing accompanying its hearing request is not sufficient to justify a comparative hearing. We have previously denied hearing requests when an applicant did not submit specific information which is necessary to comply with Section 22.33(c)(1). *See Bay Springs Telephone Co.*, 3 FCC Rcd 2133 (Mob. Serv. Div. 1988) (mere assertion that all of subscribers contacted, signed written requests for proposed expanded service found unpersuasive); *Radio Call Company of Long Island, Inc.*, 2 FCC Rcd 6772 (Mob. Serv. Div. 1987) (mere representation that expanded service is needed in response to subscriber demand is insufficient); *Speed Call, Inc.*, 2 FCC Rcd 6530 (Mob. Serv. Div. 1987) (subscriber survey forms submitted to indicate demand were found insufficient). Continental has merely presented general categories of its customers who have a need for the proposed service, without identifying those customers. We have consistently found such showings to be inadequate to justify a comparative hearing. *See, e.g., Metro Mobile, supra.* Moreover, unsubstantiated allegations of disparities in the coverage areas of the mutually exclusive applications are insufficient to justify a comparative hearing. Similarly, Continental has failed in its petition for comparative hearing to show that the public interest would be served by using a comparative hearing procedure. Therefore, we deny Continental's request for comparative hearing.

III. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that the request for comparative hearing filed by Continental Tele-Communications, Inc. IS DENIED.

6. IT IS FURTHER ORDERED that a lottery between the captioned applications of Continental Tele-communications, Inc. and Contact Express, Inc. SHALL BE HELD at a time and place to be specified in a subsequent public notice.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] *See* Public Notice, Rpt. No. PMS-89-19 (released Feb. 8, 1989).

[2] Section 22.33(c)(1) states that a mutually exclusive applicant is eligible to request a comparative hearing in lieu of the random selection procedure if it is:

> an applicant proposing to add one or more transmitter locations to an authorized station on the same frequency or frequencies for which it is already licensed and within 40 miles of existing transmitter locations on those frequencies, and when the applicant demonstrates in its application a demand by its existing subscribers for the expanded service . . . .

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of

U.S. CELLULAR, INC. File No. 46682-CL-P-221-A-86

For construction authority to establish a new cellular system to operate on frequency block A in the Domestic Public Cellular Radio Telecommunications Service to serve the Fargo-Moorehead, North Dakota - Minnesota Metropolitan Statistical Area, MSA No. 221

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 1990; Released: July 23, 1990

By the Chief, Mobile Services Division:

I. BACKGROUND AND CONTENTIONS

1. Proffitt Cellular Communications, Inc. (Proffitt Cellular), was selected first in the cellular lottery for the non-wireline authorization for the Fargo - Moorehead, North Dakota - Minnesota Metropolitan Statistical Area (Fargo MSA) and announced as the tentative selectee.[1] Subsequently, Proffitt Cellular's application was dismissed, *see Roberts Cellular, Inc.*, 5 FCC Rcd 1357 (Mob. Serv. Div. 1990), because it did not have reasonable assurance of the availability of its proposed cell sites at the time it filed its application, as required by Section 22.15(a)(1) of the Rules. On May 16, 1990, the Commission issued a Public Notice, Report No. CL-90-185, announcing U.S. Cellular, Inc. (U.S. Cellular) as the new tentative selectee for the non-wireline authorization in the Fargo MSA. On June 18, 1990, U.S. Cellular filed an amendment to its application, pursuant to Section 1.65 of the Commission's Rules, to substitute Fargo CellTelCo as the applicant.

2. On April 11, 1990, Proffitt Cellular filed a Petition for Reconsideration (petition) of the Mobile Services Division's (MSD) order dismissing its application. On July 3, 1990, Proffitt Cellular filed a Motion for Stay of Proceedings, requesting that further processing of U. S. Cellular's application be stayed pending final action on its petition. U. S. Cellular opposes the Stay Motion.

3. Proffitt Cellular argues that it has a substantial likelihood of prevailing on the merits of its petition. Proffitt Cellular also claims that it will suffer irreparable harm in the absence of a stay, because it is entitled, pursuant to the Act, to have its application considered on its merits. Proffitt Cellular argues that this right is irrevocably removed if the MSD is allowed to dismiss Proffitt's application unlawfully and then act as if the application had never been filed by granting U. S. Cellular's application. Proffitt Cellular contends that the time, effort and expense incurred in gaining reinstatement of its own application are not recoupable. Further, it contends, if U. S. Cellular's application is granted, Proffitt Cellular will suffer an incalculable loss because the MSD will have demonstrated its preference for U. S. Cellular over Proffitt Cellular. Therefore, argues Proffitt Cellular, grant of U.S. Cellular's application should be stayed to preserve impartial decision-making.

4. Proffitt Cellular also argues that a grant of U.S. Cellular's application prior to action on its petition will harm U. S. Cellular, since the latter would be pressured into construction of its proposed system that would require committing substantial financial resources. Moreover, Proffitt Cellular argues, the public interest will not be harmed by issuing a stay; operation on the non-wireline frequency block has not commenced, and there would be no disruption of any existing service. Proffitt Cellular maintains that the public has had service from the wireline operator for more than two and one-half years, and that the need for additional cellular service is not so critical that authority to U.S. Cellular must be granted immediately.

II. DISCUSSION

5. To qualify for a stay Proffitt Cellular must show that (1) it is likely to prevail on the merits; (2) it will be irreparably harmed unless a stay is issued; (3) issuance of the stay will not cause substantial harm to any other party; and (4) the public interest is best served by issuing a stay. *See Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958). Proffitt Cellular has not made a sufficient showing to justify the extraordinary relief requested.

6. Specifically, Proffitt Cellular has failed to show that it will suffer irreparable injury if the application of U.S. Cellular, as amended, is granted. *See Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) ("It is . . . well settled that economic loss does not, in and of itself, constitute irreparable harm."); It is clear that corrective relief is available to Proffitt Cellular should it wish to challenge the grant of a construction authorization to a tentative selectee, by filing a petition for reconsideration or an application for review of the grant. *See Virginia Petroleum Jobbers v. FPC*, 259 F.2d at 925. The courts have recognized that license grants which are challenged by litigation are subject to that litigation and may be undone if the basis of the grant is reversed as a result of the outcome of the litigation. *See, e.g., Alianza Federal de Mercedes v. FCC*, 539 F.2d 732, 736 (D.C. Cir. 1976). Moreover, whether or not a subsequent construction authorization is challenged, it would be conditioned on the outcome of any pending proceeding regarding the dismissal of prior lottery winners. Therefore, there is no basis for Proffitt Cellular's assertion that the Commission would be unable to provide it with adequate relief should it ultimately prevail on the merits. Accordingly, we conclude that the movant has failed to demonstrate that it will suffer irreparable harm, as is required for the grant of a stay. *See Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F. 2d 841 (D.C. Cir. 1977).[2]

7. Further, we disagree with Proffitt Cellular's assertion that the grant of U.S. Cellular's application is not imperatively necessary because the wireline carrier is already serving the Fargo MSA. On the contrary, we find that the grant of a stay would be inimical to the public interest

because it would continue the cellular service monopoly in this market and unnecessarily delay the commencement of non-wireline cellular service. *See BellSouth Mobility, Inc.*, 3 FCC Rcd 6902 (Mob. Serv. Div. 1988). Instead, we believe that processing the application of the new tentative selectee while contemporaneously considering the appeal of the first selected tentative selectee is the approach most likely to assure expeditious service to the public.

8. Accordingly, IT IS ORDERED that the request for stay filed by Proffitt Cellular Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Mobile Services Division
Common Carrier Bureau

FOOTNOTES

[1] *See* Public Notice, Report No. CL-87-142 (released January 23, 1987).

[2] Proffitt cannot justify the grant of a stay based on harm to U.S. Cellular given that U.S. Cellular opposes the grant of a stay.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company
Revisions to Tariff F.C.C. No. 12

Transmittal No. 2220

ORDER

Adopted: July 6, 1990; **Released: July 6, 1990**

By the Chief, Common Carrier Bureau:

1. Transmittal 2220 introduces Virtual Telecommunications Network Service (VTNS) Option 40, by which AT&T provides voice and data communications service between stations in the U.S., Puerto Rico, the U.S. Virgin Islands, and specific international locations. In this transmittal, AT&T also adds rates for international satellite, voice, and data transmission capabilities (STCs, VTCs, and DTCs, respectively) to the general regulations of Tariff 12, and adds a definition for STC. The rates for these international service elements are the same as those filed in Tariff F.C.C. Nos. 7 and 9. AT&T Transmittal 2220, Description & Justification at 1. Those portions of the transmittal concerning international DTCs, STCs, and VTCs and the pertinent rate schedules, were deferred until July 10, 1990. The remaining portion of Transmittal 2220, Option 40, which implemented VTNS, became effective as scheduled on June 10, 1990.

2. On April 26, 1990, US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject, or alternatively, to suspend and investigate the instant transmittal. AT&T filed a reply on April 30, 1990.

3. Sprint argues that inasmuch as AT&T filed standard rate schedules for the international STCs, DTCs, and VTCs, the Commission should order AT&T to offer these rates under a generally available tariff, as in the case of the individual case basis (ICB) rates for the local exchange carriers' (LECs) DS3 service. *Id.* at 3.

4. The Common Carrier Bureau has reviewed AT&T Transmittal No. 2220, Sprint's petition, and related pleadings. We conclude that no compelling argument has been presented that the tariff is patently unlawful so as to warrant rejection, and that an investigation is not warranted at this time.

5. Accordingly, IT IS ORDERED that the petition to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2220, filed by US Sprint Communications Company Limited Partnership, IS DENIED as to the revisions addressed herein.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications Corporation Revisions to Tariff F.C.C. No. 1 — Transmittal No. 583

ORDER

Adopted: July 13, 1990; Released: July 13, 1990

By the Chief, Common Carrier Bureau:

1. On June 4, 1990, MCI Telecommunications Inc. (MCI) filed Transmittal No. 583 to introduce new charges for customers of its Vnet, Prism I, and Prism Plus services, and to revise the definition of service "location" by providing a general definition of the term and by classifying locations as Type A and Type B. The Type A classification applies if MCI has a direct relationship with the ultimate end user; the Type B classification applies if each end user is the customer of MCI's customer. Petitions to reject or to suspend and investigate the tariff transmittal were filed by US Fibercom Network, Inc. (Fibercom),[1] William J. Mich, Jr.,[2] and Phoenix Network, Inc. [3] Marin Telemanagement Corporation filed late-filed comments together with a request that the Commission consider those comments.[4] MCI replied to the Fibercom and Phoenix petitions.

2. Fibercom alleges that the tariff revisions violate Section 202(a) of the Communications Act, 47 U.S.C. § 202(a), because they establish an arbitrary distinction between resellers and customers who take service from MCI directly, and impose on resellers higher rates than those charged direct customers for the same service. Fibercom Petition at 2. Fibercom also alleges that MCI is burdening resellers with discriminatory and unwarranted premiums for the same services utilized by multi-location customers. *Id.* at 4.

3. MCI contends that the different rates proposed for Location Type A and Location Type B customers are cost-justified and warranted by the different demands placed upon MCI by the two classifications of customers. *Id.* at 5. According to MCI, its responsibility lies with Location Type A customers and it has no direct relationship with, or direct responsibility to, Location Type B customers. It argues that this "key distinction" between the two classifications of cutomers results in different cost structures for providing service. *Id.* at 3-4. MCI maintains that Type B locations increase MCI's costs because they impose upon MCI substantial administrative and customer service responsibilities that do not arise in connection with serving Location Type A customers. *Id.* at 5. In addition, MCI argues, Location Type B customers pose a greater financial risk to MCI than do customers who own or franchise locations at which service is furnished, frequently involving costly collection efforts. *Id.* at 9.

4. The Common Carrier Bureau has reviewed MCI Transmittal No. 583 and the various pleadings. We conclude that no compelling argument has been presented that the proposed tariff revisions are patently unlawful so as to require rejection, and that no question has been presented that warrants investigation at this time.

5. Accordingly, IT IS ORDERED that the petition to reject or to suspend and investigate MCI Telecommunications Tariff F.C.C. No. 1, Transmittal No. 583, filed by Fibercom Network IS DENIED.

6. IT IS FURTHER ORDERED that the motions to accept late-filed pleadings filed by William Mich and Marin Telemanagement Corporation ARE DENIED.

7. IT IS FURTHER ORDERED that the petition to suspend and investigate filed by Phoenix Networks, Inc. IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] US Fibercom Network, Inc., Petition To Reject, or To Suspend and Investigate, filed June 11, 1990 (Fibercom Petition).

[2] William J. Mich, Petition To Reject, or Alternatively Suspend and Investigate and Motion To Accept Late Filing, filed June 22, 1990. Mr. Mich's motion to accept the late filing is denied.

[3] Phoenix Network, Inc., Petition To Suspend And Investigate, filed June 27, 1990. Phoenix's late-filed petition will not be considered.

[4] Marin Telemanagement Corporation, Comments, filed June 28, 1990. Marin's request to accept lated-filed comments is denied.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-327

In the Matter of

AT&T COMMUNICATIONS Revisions to Tariff F.C.C. No. 15

Transmittal No. 2233

Competitive Pricing Plan 5 - -
La Quinta Motor Inns, Inc.

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1990; Released: July 13, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On April 16, 1990, AT&T filed Transmittal No. 2233 to introduce its fifth Competitive Pricing Plan (CPP5) under AT&T Tariff F.C.C. No. 15.[1] Transmittal 2233 is scheduled to become effective July 15, 1990. AT&T claims that CPP5 responds to a special off-tariff discount offered to La Quinta Motor Inns, Inc. (La Quinta) by MCI Telecommunications Corporation (MCI). MCI, National Telecommunications Network (NTN), and US Sprint Communications Company Limited Partnership (US Sprint) filed petitions to reject AT&T's transmittal. The Competitive Telecommunications Association (CompTel) filed a petition to reject or suspend and investigate.[2] For the reasons set forth below, we suspend Transmittal 2233 for the full five-month statutory period.

II. BACKGROUND

2. The Commission has previously considered the lawfulness of an AT&T Tariff 15 offering of Competitive Pricing Plans. In 1988, AT&T filed its first competitive pricing plan for the Holiday Corporation. [3] AT&T had developed the Holiday Rate Plan (HRP) in response to MCI's offer of discounted service to the Holiday Corporation. The Commission initiated an investigation to determine whether HRP was unjustly and unreasonably discriminatory in violation of Section 202(a) of the Communications Act, and whether HRP was justified under the competitive necessity doctrine.[4] In the *HRP Final Order*, the Commission found that, even assuming that the competitive necessity defense can justify a single customer offering, that defense could not justify retention of the HRP discount.[5] The Commission concluded that HRP was unreasonably discriminatory and ordered AT&T to file corrective tariff revisions.

3. In 1989, AT&T filed its second Competitive Pricing Plan (CPP2) for Resort Condominiums International (RCI) in response to MCI's offer of discounted service to RCI.[6] On January 19, 1990, the Common Carrier Bureau (Bureau) suspended CPP2 for the full five-month statutory period and initiated an investigation to determine, *inter alia*, whether CPP2 violates the Communications Act prohibition against unreasonable discrimination.[7] Recently, on June 25, 1990, the Bureau suspended AT&T's fourth competitive pricing plan for CBS, Inc. until November 26, 1990.

4. The instant transmittal represents AT&T's attempt to establish a single customer offering in Tariff 15 for La Quinta. La Quinta is a nationwide lodging chain with over 207 inns, located in 29 states, and executive offices located in San Antonio, Texas. La Quinta generates approximately 8.7 million minutes of interstate traffic annually. AT&T is currently the principal provider of interexchange telecommunications service to La Quinta. AT&T Description and Justification (D&J) at 6. According to AT&T, La Quinta recently received proposals from MCI and US Sprint to replace its current outbound and inbound services. It is AT&T's understanding that although the MCI offer is based generally on its tariffed services, the rates, terms, and conditions, which MCI offered La Quinta are substantially more favorable than MCI's most economical existing tariffed rates, terms, and conditions, and have been made available only to La Quinta. *Id.* at 6.

5. According to AT&T, La Quinta expressly stated that it would accept MCI's proposal unless AT&T offered a substantially more competitive rate. AT&T claims that it developed the CPP5 rates in response to this statement. *Id.* at 7. According to AT&T, CPP5 offers La Quinta, and other customers with a substantially similar offer from MCI, a 22 percent discount on AT&T's Software Defined Network (SDN) Expanded Volume Plan Part I (EVP Part I) rates, including Network Remote Access (NRA) Option III-Express. AT&T states that this discount is in addition to any volume discounts that would otherwise be applicable under the standard SDN EVP Part I tariff. CPP5 also contains a one-year term commitment, during which AT&T guarantees that it will not revise the CPP5 rates unless otherwise agreed to by AT&T and the customer. If the rates are revised without the customer's consent during the one-year term, CPP5 gives the customer the right to terminate service without liability. *Id.* at 4-5.

6. AT&T contends that its response to MCI's customer-specific offer is justified under the doctrine of "competitive necessity." AT&T states that in order to establish competitive necessity, it must show that: (1) an equal or lower priced competitive alternative -- *i.e.*, a similar offering or set of offerings from other carriers -- is available to the customer of the discounted offering; (2) the terms of the discounted offering are reasonably designed to meet that competitive alternative without undue discrimination; and (3) the discount contributes to reasonable rates and efficient services for all users. AT&T D&J at 7.[8] Based upon its own calculations, AT&T asserts that the rates in MCI's offer to La Quinta are below MCI's standard tariffed rates, AT&T's most economical standard tariffed rates, and AT&T's proposed CPP5 rates. Thus, AT&T concludes, La Quinta has been offered an alternative to AT&T's services at an equal or lower rate and has satisfied the first element of the competitive necessity test. *Id.* at 8-9. With regard to the second element, AT&T maintains that CPP5 is narrowly tailored to meet competition without undue discrimination because it is available to any customer which can demonstrate that it has received a substantially similar offer from MCI. Finally, AT&T ar-

gues that by enabling AT&T to preserve usage and revenues that would otherwise be lost to competition, CPP5 will benefit all customers through improved earnings which can be used to cover common costs. *Id.* at 9-11.

III. PLEADINGS

A. Petitions

7. CompTel asserts that all single-customer rates for standard services by a dominant carrier are patently discriminatory and unreasonable in violation of Sections 201(a) and 202(b) of the Communications Act. Even if the competitive necessity test were applicable, CompTel maintains that CPP5 must be rejected because, by definition, it is not available to the same base of customers as the MCI offer. CompTel Petition at 2. It contends that the "substantially similar" standard in the tariff makes CPP5 conditionally available, not generally available. CompTel also argues that the competitive response provision in Section 2.1.9.A.1 of the tariff is inconsistent with AT&T's net revenue calculations for CPP5 because the calculations do not take into account the offering of CPP5 to any other customers. It states that the Bureau cannot permit CPP5 to take effect based on the "unproven and unprovable assumption" that the offering of CPP5 to unspecified additional customers in the future will satisfy the net revenue test. *Id.* at 3. Furthermore, CompTel claims that AT&T has failed to comply with cost support requirements in Section 61.38. According to CompTel, the Commission prohibited the use of the net revenue test for Tariff 15 filings in the order adopting incentive regulation for AT&T. *Id.* at 5-6.

8. MCI maintains that CPP5 is unlawful for the same reasons as were HRP, CPP2, CPP3, and CPP4, and incorporates by reference its comments in those proceedings. MCI Petition at 3. In addition, MCI accuses AT&T of materially misrepresenting the offer MCI made to La Quinta in February, 1990. It contends that the terms set forth in CPP5 do not match MCI's February offer. Under the circumstances, MCI maintains that AT&T cannot satisfy the competitive necessity test. It concludes that the Commission should require AT&T to either withdraw CPP5 or broaden the offer to one that is truly generally available. *Id.* at 5.

9. NTN argues that AT&T's Tariff 15 filings constitute unlawful, discriminatory target pricing. In its opinion, existing law does not permit AT&T to elude the Commission's prohibition against discriminatory pricing through claims of competitive necessity. NTN contends that Transmittal 2233 is part of AT&T's strategy to implement a series of pin-point discriminatory rates designed to discipline competitors. NTN Petition at 2-3. NTN also incorporates by reference the arguments it presented in its opposition to AT&T's Direct Case in CC Docket No. 90-11.

10. US Sprint maintains that CPP5 suffers from all of the same defects as AT&T's earlier Tariff 15 filings. In addition, US Sprint argues that AT&T's "meet but not beat" showing does not adequately demonstrate the reasonableness of CPP5. US Sprint Petition at 3-5. It also claims that there is no indication that any additional functionalities, service integration, or custom network design services are being provided to La Quinta under CPP5. US Sprint believes that AT&T is simply attempting to bypass price cap regulations for its SDN and 800 service.[9] According to US Sprint, if AT&T is allowed to pull certain service offerings to favored customers outside the sphere of price cap regulation, AT&T will attempt to recover all of that service's common and fixed costs from those customers subscribing to the service at capped rates, while selected large business customers will take the identical services, at discounted rates, under Tariff 15. *Id.* at 7-9.

B. Reply

11. AT&T states that the petitioners have merely reiterated or incorporated by reference generalized arguments raised in connection with previous Tariff 15 filings. It maintains that it has previously demonstrated that these claims are without merit. With respect to MCI's allegation that it has "materially misprepresented" MCI's offer to La Quinta, AT&T contends that MCI's claim is immaterial since CPP5 is substantially in accordance with MCI's proposal as revised in March 1990. AT&T also takes issue with US Sprint's assertion that the "meet but not beat" standard may not be probative of the reasonableness of CPP5. According to AT&T, the Supreme Court has held, and the Commission has agreed, that responsive offers that meet but do not beat the offers to which they respond are permissible under competitive necessity. Furthermore, AT&T states that it is not discounting its inbound rates to La Quinta at the expense of other 800 service customers, as US Sprint alleges. It notes that CPP5 does not discount inbound traffic for La Quinta's reservations traffic. Finally, AT&T repeats its arguments that Tariff 15 offerings are not unreasonably discriminatory because they are available to any customer with a substantially similar offer from a competing IC, and that there is no prohibition against AT&T's use of a net revenue showing to satisfy the cost support requirement of Section 61.38 for Tariff 15 filings.

IV. DISCUSSION

12. We conclude, based on our review of the instant transmittal and the pleadings, that AT&T's offering raises significant issues that warrant investigation. Single-customer offerings raise serious questions of compliance with the Communications Act prohibition against unreasonable discrimination. Yet, as the Commission observed at the time it initiated its investigation of the Holiday Rate Plan, "[l]egal precedent supports the view that otherwise discriminatory rates can be reasonable where justified by competitive necessity."[10] Determining whether AT&T may properly rely upon competitive necessity in this instance, however, requires further analysis and additional information from interested parties.

13. We also conclude that the issues raised by this transmittal warrant exercise of our discretion to suspend the transmittal pending investigation. We recognize that suspension is a severe regulatory action because it delays the implementation of new service offerings. In deciding whether to suspend, we must balance the interests of ratepayers, the filing carrier, and the competitive process. On balance, we have decided that the potential for a violation of Section 202(a) of the Communications Act by the instant transmittal, and consequently the potential for harm to other ratepayers, outweighs the negative impact upon AT&T. Therefore, we conclude that the Commis-

sion's preference for avoiding unnecessary disruption of the competitive balance in the marketplace does not require that we refrain from suspending this transmittal.

14. We will incorporate this investigation into the proceeding established in CC Docket No. 90-327. We will designate the issues to be examined in this investigation in a future Order.

V. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED that, pursuant to Sections 204(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 204(a), 403, an investigation IS INSTITUTED into the lawfulness of the tariff revisions filed by AT&T Communications, Inc., in Tariff F.C.C. No. 15, Transmittal No. 2233.

16. IT IS FURTHER ORDERED that this investigation IS INCORPORATED into the proceeding established in CC Docket No. 90-327.

17. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the instant tariff revisions filed by AT&T Communications, Inc. ARE SUSPENDED until December 15, 1990.

18. IT IS FURTHER ORDERED that AT&T Communications, Inc. SHALL FILE a supplement reflecting this suspension no later than July 18, 1990. Special Permission No. 90-650 is assigned for this purpose.

19. IT IS FURTHER ORDERED that the petitions to reject AT&T Communications Transmittal No. 2233 filed by MCI Telecommunications Corporation, National Telecommunications Network, and US Sprint Communications Company Limited Partnership ARE DENIED.

20. IT IS FURTHER ORDERED that the petition to reject or suspend and investigate AT&T Communications Transmittal No. 2233 filed by Competitive Telecommunications Association IS GRANTED to the extent indicated herein and otherwise IS DENIED.

21. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] AT&T maintains that its Competitive Pricing Plans offer telecommunications service to a specific customer at rates established to respond to a competitor's offer.

[2] In addition to these pleadings, MCI and AT&T addressed letters to the Chief of the Common Carrier Bureau concerning matters disputed in their pleadings. We did not include these materials in the record upon which we based this Order. No party is disadvantaged by this treatment since our investigation of the transmittal will give MCI and AT&T an opportunity to introduce properly into the record the information and arguments in their letters.

[3] AT&T's first Competitive Pricing Plan, the Holiday Rate plan, was introduced in tariff revisions filed May 9, 1988, under Transmittal No. 1215.

[4] *See* AT&T Communications, CC Docket No. 88-471, Memorandum Opinion and Order, 4 FCC Rcd 7712 (1988).

[5] AT&T Communications, CC Docket No. 88-871, Memorandum Opinion and Order, 4 FCC Rcd 7933, 7934 (1989) (*HRP Final Order), recon. denied*, 5 FCC Rcd 1821 (1990).

[6] CPP2 was introduced in tariff revisions filed October 23, 1989, under Transmittal No. 1854. On November 6, 1989, AT&T filed amendments to CPP2 under Transmittal No. 1883.

[7] AT&T Communications, Inc., CC Docket No. 90-11, Memorandum Opinion and Order, 5 FCC Rcd 2171 (Com.Car.Bur. 1990). Transmittal 1854 became effective June 21, 1990, but is still subject to investigation.

[8] *See also* Private Line Rate Structure and Volume Discount Practices, Memorandum Opinion and Order, CC Docket No. 79-246, 97 FCC 2d 923, 948 (1984) (*Volume Discount Order).*

[9] US Sprint maintains that AT&T's Network Remote Access feature, which allows calls made from an off-network station to automatically terminate at a predetermined special access, on-network location, is merely a substitute for 800 service.

[10] *HRP Investigation Order,* 4 FCC Rcd at 7713.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition of Citizens Utilities Company and Citizens Utilities Rural Telephone Company, Inc. for Waiver of Part 36.125 of the Commission's Rules	AAD 9-1946

ORDER

Adopted: July 16, 1990; Released: July 20, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. On December 6, 1989, Citizens Utilities Company and Citizens Utilities Rural Telephone Company, Inc. (Citizens) filed a petition for waiver of certain portions of Section 36.125[1] of the Commission's Rules. Section 36.125 provides that, beginning January 1, 1993, Category 3 - Local Switching Equipment investment for study areas with 50,000 or more access lines shall be apportioned between the interstate and state jurisdictions on the basis of relative Dial Equipment Minutes (DEM), the minutes of holding time of the originating and terminating local switching equipment. This section also requires that beginning January 1, 1993, Category 3 investment for study areas with fewer than 50,000 access lines be apportioned using the lesser of .85 or the interstate DEM factor multiplied by a weighting factor.[2] The weighting factors are designed to provide high cost assistance to smaller carriers by increasing the Category 3 investment assigned to the interstate jurisdiction. Finally, this section requires carriers to phase-in the DEM allocator over a 5-year transition period from 1988-1992.

II. THE PETITION

2. Citizens states that on January 1, 1988, when the transition to the DEM allocator began, it had under 50,000 access lines and was entitled to use a weighting factor of 2.0. Citizens anticipates that this year its access lines will exceed 50,000 and the application of Section 36.125 in 1990 will have three adverse effects. First, Citizens notes that it will no longer be eligible for DEM weighting. Second, Citizens states that it will not have a transition period in which to adjust from its 2.0 weighting to no weighting. Finally, Citizens claims that its Category 3 investment, computed using current separations methodology, has increased to over $14 million but its investment will remain frozen at 1987 levels. The term "frozen investment" as used in Citizens' petition refers to the December 31, 1987, Categories 4, 5, 6 and 7 investment which is used in the computations carriers must perform when applying Section 36.125.

3. Citizens argues that the stated intent of the rules adopting the DEM allocation methodology was to conform, simplify and improve the application of the separations procedures, and minimize the revenue requirement impact of the revision. Citizens alleges that when it exceeds 50,000 access lines the current separations rules will result in a material negative revenue impact which is an effect that the transition rules sought to avoid. To alleviate the negative revenue impact it alleges will occur when it exceeds 50,000 access lines, Citizens requests that the Commission allow it to either retain its current 2.0 DEM weighting for the duration of the transition period or allow it a 5-year transition period in which to phase-out its DEM weighting.

III. DISCUSSION

4. For the reasons discussed below we deny Citizens' petition for waiver. First, Citizens fails to show special circumstances that warrant a departure from the general rule. Citizens states that the Commission's intent in adopting the rules was to simplify the rule while minimizing the revenue requirement impact, implying that any revenue requirement shift is so "special" as to warrant relief. In its *Recommended Decision and Order*, however, the Joint Board specifically stated that a change to the DEM allocator would shift approximately $830 million in revenue requirement to the state jurisdiction. [3] Citizens' petition simply demonstrates how this shift occurs for one affected carrier. Second, Citizens fails to show that the rule has an adverse impact on it or on its local ratepayers. Citizens submits no data which quantifies the alleged material negative revenue impact on it, nor does it show to what extent this alleged impact will adversely affect its local ratepayers beyond that which the Commission recognized when it adopted the *Recommended Decision and Order*. Citizens merely states that its Category 3 investment has increased from $11 million to over $14 million. Finally, Citizens still has an opportunity to phase-in the revenue requirement impact resulting from Section 36.125. This is the third year of the transition period and Citizens thus has two years before the full DEM allocator will be used to allocate Category 3 investment.

IV. ORDERING CLAUSE

5. Accordingly, IT IS ORDERED, That the petition for waiver of Part 36.125 of the Commission's Rules and Regulations filed by Citizens Utilities Company and Citizens Utilities Rural Telephone Company, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] 47 U.S.C. §36.125.

[2] The rule requires carriers with 0-10,000 access lines to apply a weighting factor of 3.0, carriers with 10,001-20,000 access lines a weighting factor of 2.5, carriers with 20,001-50,000 access lines a weighting factor of 2.0, and carriers with more than 50,000 access lines a factor of 1.0.

[3] Amendment of Part 67 (new Part 36) of the Commission's Rules and Establishment of a Joint Board, 2 FCC Rcd 2551, para. 43 (Joint Board 1987) *Recommended Decision and Order.*

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 20, 1990

NYNEX FILES PETITION FOR WAIVER REGARDING ELECTRONIC WHITE PAGES SERVICE

Pleading Cycle Established

On July 10, 1990, the New York Telephone Company and New England Telephone and Telegraph Company (NYNEX) filed a petition for waiver of Part 69 of the Commission's Rules to establish new Switched Access rate elements for proposed Electronic White Pages (EWP) service. This service would permit NYNEX customers to access electronic directory listings without operator interaction or reference to printed white pages.

Interested parties should file comments regarding the NYNEX waiver petition no later than **August 15, 1990.** Reply comments should be filed no later than **August 30, 1990.**

An original and four copies of all comments and replies must be filed with the Secretary of the Commission in accordance with Section 1.51(c) of the Commission's Rules. Parties must also furnish one copy of their comments and replies to International Transcription Service, Inc. (ITS), the Commission's duplicating contractor, at its office in Room 246, 1919 M Street, N.W., Washington D.C. 20554, and one copy to the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

Copies of US West's waiver petition, along with other related documents, may be obtained from ITS. The documents are also available for public inspection and copying in Room 518, 1919 M Street, N.W.

For further information, contact Steven M. Spaeth, Tariff Division, Common Carrier Bureau, at (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-338

In re Applications of

STUART GAINES BROADCASTING CORPORATION (hereafter "SGBC")	File No. BPH-881027MJ
GARY L. VIOLET (hereafter "Violet")	File No. BPH-881027MK
THOMAS J. JOHNSON (hereafter "Johnson")	File No. BPH-881027MG (Dismissed Herein)
GREGORY BROADCASTING ASSOCIATES, INC. (hereafter "GBA")	File No. BPH-881027MI (Dismissed Herein)

For Construction Permit for a
New FM Station on Channel 283A
in Gregory, Texas

HEARING DESIGNATION ORDER

Adopted: July 3, 1990; Released: July 23, 1990

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.

2. *Preliminary Matters.* On April 26, 1990, Johnson, by his attorney, requested dismissal of his application. Accordingly, Johnson's application will be dismissed herein.

3. An engineering review of GBA's application reveals that the proposed operation exceeds the maximum facilities allowed under the Agreement between the United States of America and the United Mexican States Concerning Frequency Modulation in the 88 to 100 MHZ Band ("U.S. Mexican Agreement"), 24 U.S.T. 1815, T.I.A.S. No. 7697. GBA proposes 3 kilowatts effective radiated power (ERP) and 100 meters antenna height above average terrain (HAAT). The U.S. Mexican Agreement limits Class A FM stations operating at 3 kw within 320 kilometers of the U.S. Mexican border to a maximum HAAT of 91 meters. *See, e.g., Kerrville Radio, A limited Partnership*, 2 FCC Rcd 3441 (1987); *Kerr County Broadcasting*, 4 FCC Rcd 5021 (1989). Accordingly, the GBA application will be dismissed as inadvertently accepted for filing.[1]

4. SGBC petitioned for leave to amend its application on February 14, 1990. The accompanying amendment was filed after February 13, 1989, the last day for filing minor amendments as of right. Under Section 1.65 of the Commission's Rules the amendment is accepted for filing. However, an applicant may not improve its comparative position after the time for filing amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

5. Data submitted by the applicants indicate there would be significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, IT IS ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, best serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. IT IS FURTHER ORDERED, That the application filed by Thomas J. Johnson IS HEREBY DISMISSED.

9. IT IS FURTHER ORDERED, That the application filed by GBA IS HEREBY DISMISSED as inadverently accepted for filing.

10. IT IS FURTHER ORDERED, That the petitions to deny filed by SGBC against the Johnson and GBA applications ARE DISMISSED AS MOOT.

11. IT IS FURTHER ORDERED, That the petition for leave to amend filed by SGBC IS GRANTED, and the corresponding amendment IS ACCEPTED to the extent indicated herein.

12. IT IS FURTHER ORDERED, That in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M St., N.W., Washington, D.C. 20554.

13. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

14. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section

73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief
Audio Services Division
Mass Media Bureau

FOOTNOTE

[1] On April 3, 1990 SGBC filed Petitions to Dismiss or Deny the Johnson and GBA applications. In light of the action taken by the Commission herein, the Petitions will be dismissed.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Repeal of Requirement to Audit the Installation and Maintenance Nondiscrimination Plan of American Telephone and Telegraph Company	RM-6957
Investigation of the State of Competition in the Long Distance Interexchange Marketplace	RM-7007

ORDER

Adopted: July 9, 1990; Released: July 20, 1990

By the Commission:

1. On August 15, 1989, AT&T filed a petition asking us to initiate a Rule Making to repeal the requirement that AT&T conduct and file an annual audit of its compliance with its nondiscrimination plan in the *AT & T Structural Relief* proceeding.[1] On August 23, 1989, the Alternative Carrier Telecommunications Association (ACTA) filed a petition asking us to initiate a notice of inquiry and Rule Making to obtain facts and information on the state of competition in the long-distance interstate marketplace.

2. On March 8, 1990, we adopted a Notice of Proposed Rule Making (CC Docket No. 90-132) seeking information and comment on the competitiveness of interstate long-distance services and proposing a phased-in package of regulatory reforms with respect to certain of AT&T's interstate services.[2] In that Notice of Proposed Rule Making, we announced that we were terminating the AT&T audit relief proceeding and that we would address the issues raised therein by incorporating the record of that proceeding into the record in CC Docket No. 90-132. [3] We also announced that we were terminating the ACTA proceeding and incorporating the record of that proceeding in CC Docket No. 90-132.[4]

3. Accordingly, IT IS ORDERED that AT&T's petition for Rule Making, RM-6957, and ACTA's petition for notice of inquiry and Rule Making, RM-7007, are DISMISSED WITHOUT PREJUDICE, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, 47 U.S.C. §§ 154(i) and (j), and Section 1.401(e) of the Commission's Rules, 47 C.F.R. §1.401(e).

FEDERAL COMMUNICATIONS COMMISSION

Donna Searcy
Secretary

FOOTNOTES

[1] Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Co., 102 FCC2d 655 (1985), *modified in part*, 104 FCC2d 739 (1986). The *AT & T Structural Relief* proceeding replaced the structural separation requirements established in *Computer II* to govern AT&T's provision of customer premises equipment (CPE) with a regulatory regime based on nonstructural safeguards. *See* Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Final Decision, 77 FCC2d 384, *modified*, 84 FCC2d 512 (1981), *aff'd sub nom.*, Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff'd on second further recon.*, FCC 84-190 (released May 4, 1984). One of the nonstructural safeguards established in the *AT&T Structural Relief* proceeding is the requirement that AT&T refrain from discriminating against customers with non-AT&T CPE in its provision of network services.

[2] *See* Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rule Making, CC Docket No. 90-132, FCC 90-90 (released April 13, 1990).

[3] *Id.* at ¶ 169, n. 220.

[4] *Id.* at ¶ 47, n. 60.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of Prime Cable
for Forfeiture

FORFEITURE ORDER

Adopted: July 9, 1990; Released: July 13, 1990

By the Commission:

1. The Commission has before it for consideration a Notice of Apparent Liability for forfeiture released February 22, 1989 to Prime Cable of Austin, Texas.

2. The Notice of Apparent Liability for $18,000 was issued for violation of Section 634(c) of the Communications Act of 1934, as amended and Sections 76.73 (b)(5) and 76.75 of the Commission's Rules.[1]

3. The following events were deliniated in the NAL. On May 18 to 20, 1988, an EEO audit of Prime's headquarters unit (HQ-55, Austin, Texas) revealed that Prime apparently had not complied with the rule provisions noted above for the years covered by the 1986,[2] 1987 and 1988 annual employment reports. Review of documents assembled by Prime and interviews with Prime officials indicated that: the unit did not evaluate its turnover against the availability of minorities and women; the unit did not have a program to ensure that promotions were made in a non-discriminatory manner; the unit did not encourage minority and female entrepreneurs to conduct business with all parts of its operation; and the unit did not analyze the results of its EEO efforts. Rather, it appeared from the audit that, prior to March 1988, the unit's EEO efforts were confined to dissemination of an employee handbook and review of the unit's statistical profile in conjunction with the preparation of the company's annual employment reports.

4. Prime Cable has not responded to the NAL.

5. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, that Prime Cable, FORFEIT to the United States the sum of eighteen thousand dollars ($18,000) for the willful and continued violation of Section 634 (c) of the Communications Act of 1934, as amended, and Sections 76.73 (b)(5) and 76.75 of the Commission's Rules. Payment of the forfeiture may be made by mailing to the Commission a check or similar instrument payable to the Federal Communications Commission on or before **August 14, 1990.** *See* 47 CFR Section 1.80 (f)(4).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Section 76.73 (b)(5) of the Commission's Rules requires cable operators to: "[c]onduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity . . ." Section 76.75 states that an employment unit's EEO program should reasonably address itself to a number of areas, including: recruitment of minorities and women whenever there is a job vacancy; evaluation of turnover; promotions; use of female and minority entrepreneurs; and an analysis of the results of EEO efforts. These provisions directly implement Section 634(c) of the Communications Act.

[2] By letter dated July 11, 1988, the staff rescinded the unit's 1986 EEO certification.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 23, 1990

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for responding to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. Typically, these responses to individuals are not published in the FCC Record (*See* 0.445(a) of the rules).

These decisions are available for public inspection. Periodically, the Managing Director releases a Public Notice listing the decisions he has made on these matters. The decisions are placed in General Docket 86-285. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director decisions are released for information:

Herbert Regenstreif - Request for Refund of $6,000 hearing fee Granted - Application for a new FM station at Midway, Kentucky (March 26, 1990)

Homewood Superior Broadcasters - Request for Reinstatement of Application Granted - Application for construction permit for Channel 247A at Homewood, Alabama (April 9, 1990)

Antonio Mediavilla - Request for Exemption or Waiver of filing fee Deny - Application for license to operate a land radio station in the maritime services (April 9, 1990)

American Satellite Company d/b/a Contel ASC - Request for a determination of appropriate fee - Determined that filing fee for 4,495 earth stations licenses and five Section 214 certificates should be $11,700.00 (April 16, 1990)

Owen D. Woodward & J. David Bullion d/b/a Brenkenridge Broadcasting Company - Request for refund of $6,000 hearing fee Granted - Application for a new FM station at Stephenville, Texas (April 16, 1990)

WCND, Inc. - Request for a $325.00 Refund of filing fee Granted - Application for license to construction permit in Shelbyville, Kentucky (April 16, 1990)

Lester L. Williams - Request for Reconsideration of decision to deny refund of hearing fee Denied - Application for new AM station at Moneta, Virginia (April 16, 1990)

Edenton Christian Radio, Inc. - Request for Refund of fee Referred to Mass Media Bureau for Appropriate Action - Application for minor change in construction permit for FM Station WBXB, Edenton, N.C. (April 16, 1990)

IDB Communications Group, Inc. - Request for determination of appropriate fee - Determination appropriate filing fee to be $2,700 for the transfer of control of 109 earth stations (April 16, 1990)

Lisa M. Jenkins - Request for reinstatement of an application Granted - Application for new FM radio station at Clarksville, Indiana (April 16, 1990)

William H. Finch - Request for Refund of filing fee Denied - Application for new FM radio Station at Pamplico, South Carolina (April 16, 1990)

Fred R. Flinn - Request for Refund of filing fee Denied- Application for new FM station at Wilson, Arkansas (April 16, 1990)

Daystar Radio, Ltd - Request for Refund of filing fee Denied - Application for AM station KLLV, Breen, Colorado (April 17, 1990)

Kelly Broadcasting System Corporation - Request for Waiver of hearing fee Denied - Application for renewal of license for Station WNIK-FM, Arecibo, Puerto Rico (April 20, 1990)

Susan E. Turgetto - Request for Refund of $6,000 hearing fee Granted - Application for new FM Station at Sutter Creek, California (April 23, 1990)

Belhouse and Associates, Inc. - Request for Refund of hearing fee Granted - Application for new FM station at Midway, Kentucky (April 23, 1990)

North Communications of Puerto Rico, Inc. - Request for reconsideration of decision denying refund of fee Granted - Application for public land mobile two-way radio service on Frequency 454.6250 MHz in Puerto Rico (April 25, 1990)

Manistique Translator for Christ, Inc. - Request for ruling of MMB determination not to refund fee Denied - Application for authority to construct new FM translator at Manistique, Michigan (April 30, 1990)

Brattleboro Broadcasters, Inc. - Request for Refund of filing fee Denied - Application for increase in power of station WKVT-FM, Brattleboro, Vermont (May 3, 1990)

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER CLAUDETTE E. PRIDE, ACTING CHIEF, FEE SECTION PH. 632-0241

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Midyear 1986 Access Tariff Filings

Centel Telephone Companies
Tariff F.C.C. No. 1

ORDER

Adopted: July 13, 1990; Released: July 23, 1990

By the Chief, Common Carrier Bureau:

1. On May 4, 1990, the Central Telephone Companies (Centel) filed a petition for waiver of that portion of the Commission's Order, Midyear 1986 Access Tariff Filings, 1 FCC Rcd 1247 (1986) (*December 19 Order*) directing the local exchange carriers (LECs) to provide originating WATS access lines (WALs) with Feature Group A (FGA) and Feature Group B (FGB) services.[1] A number of carriers, including Centel, were granted waivers of this requirement. Centel's previous waiver will expire on August 1, 1990. Centel's pending waiver petition is unopposed.

2. Centel seeks to have this waiver extended indefinitely. According to Centel, it would be forced to make modifications to its billing and network switching systems in order to provide originating WALs in connection with FGA and FGB. Centel Petition at 2. Moreover, Centel asserts that it continues to believe that the demand for FGA and FGB WATS access is undemonstrated and, in any event, declining because of continued equal access conversions. *Id.* at 3. According to Centel, 87 percent of its access lines are presently served by equal access end offices and that figure should reach 94 percent by the end of 1990. Finally, Centel states that the majority of the remaining access lines served by non-converted offices are smaller exchanges, where the likelihood of a carrier ordering WATS access through FGA and FGB is considered small. *Id.*

3. This waiver request is similar to those filed by Centel in 1987, 1988, and 1989. As there continues to be no demand for the service at issue and the costs of providing the service are not insignificant, we conclude that a one-year extension of Centel's waiver is warranted. We also conclude that granting an indefinite waiver would defeat the purpose of the Commission's *December 19 Order*. Until such time as that Order is modified to eliminate this service requirement, an indefinite waiver cannot be granted.

4. Accordingly, IT IS ORDERED that the petition for waiver filed by the Centel Telephone Companies IS GRANTED to the extent indicated herein and otherwise IS DENIED.

5. IT IS FURTHER ORDERED that the waiver granted by this Order expires on August 1, 1991.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Petition for Waiver of Midyear 1986 Access Tariff Filings, filed by Central Telephone Company on May 4, 1990 (Centel).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-487

In re Applications of

GOODLETTSVILLE BROADCASTING COMPANY, INC., *et al.* File No. BPH-861215MI

For a Construction Permit for a New FM Station
Goodlettsville, Tennessee

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1990; Released: July 23, 1990

By the Commission:

1. Before the Commission are an Application for Review filed January 22, 1990 by Goodlettsville Associates (Associates) and related pleadings.[1] These pleadings relate to a decision of the Review Board affirming the presiding ALJ's grant of a motion to dismiss Associates' application. 4 FCC Rcd 8627 (Rev. Bd. 1989).

2. We agree with the Board's determination in this case and will deny Associates' Application for Review. However, there are two matters raised by Associates that were not specifically discussed by the Board and, therefore, warrant consideration here.

I. BACKGROUND

3. This proceeding currently involves 11 mutually exclusive applications.[2] At the outset, the Commission noted that seven of the applicants were short-spaced to a proposal of Station WSEK-FM, Somerset, Kentucky to upgrade its facilities. That proposal was the subject of a pending rule making proceeding. *Hearing Designation Order* (HDO), 3 FCC Rcd 6608 (1988). Nonetheless, the applicants were allowed to proceed to comparative hearing subject expressly to the outcome of the Somerset rule making proceeding. On December 13, 1988, the Commission released an order which granted WSEK-FM's proposal and specifically permitted the seven short-spaced applicants in this proceeding to amend their applications to meet spacing requirements. [3] The presiding Administrative Law Judge in this proceeding, Joseph Chachkin (ALJ), gave the short-spaced applicants until March 15, 1989 to specify new transmitter sites. *Order*, FCC 89M-212 (Jan. 23, 1989). Subsequently, the ALJ granted Associates two extensions of time, until April 17, 1989, within which to file its conforming amendment.

4. However, the amendment subsequently filed by Associates did not specify a new transmitter site but rather recalculated its original site pursuant to new engineering guidelines adopted by the Commission. *See Amendment of Part 73 of the Commission's Rules to Permit Short - Spaced FM Station Assignments Using Directional Antennas (Directional Antennas)*, 4 FCC Rcd 1681 (1989). The order in *Directional Antennas* specified that the new short spacing rules would be effective on April 14, 1989 or upon OMB approval of FCC Forms 301 and 304, whichever was later. 4 FCC Rcd at 1688, ¶ 54. On April 13, 1989 the Mass Media Bureau released a *Public Notice* (Mimeo 2391) advising that all applications requesting short-spaced facilities pursuant to *Directional Antennas* would be returned if filed prior to the effective date of the rules. Nevertheless, Associates filed its amendment on April 17, 1989, relying upon the new, but not yet effective, rules. On May 8, 1989, the ALJ denied the amendment because the new short spacing rules adopted in *Directional Antennas* had not become effective. *Memorandum Opinion and Order*, FCC 89M-1370. The rules ultimately became effective on June 26, 1989.

5. On June 15, 1989, the last day of the hearing and three months after the ALJ's original deadline for filing transmitter site amendments, Associates filed an amendment specifying a new transmitter site. The ALJ found Associates guilty of a gross lack of diligence and denied the amendment. *Memorandum Opinion and Order*, FCC 89M-1926 (July 24, 1989). Subsequently, an opponent filed a motion to dismiss Associates' application because Associates did not have a viable transmitter site and it lacked good cause to amend to a new site. On October 5, 1989, the ALJ dismissed Associates' application because no substantial and material questions of fact remained concerning the viability of Associates' original transmitter site. *Goodlettsville Broadcasting Company, Inc.*, 4 FCC Rcd 8627, 8627-28 ¶¶ 2-7 (1989). The Review Board affirmed the ALJ's action. 4 FCC Rcd 8627 (Rev. Bd. 1989).

6. Associates argues that the Board erred because: (1) Associates was unaware of the need to amend to a new site until slightly before June 15, 1989 (when the ALJ denied its April 17 amendment), (2) good cause existed for the June 15 amendment and (3) the June 15 amendment removed a disqualifying defect.

7. We agree with the Board's ruling that it was not the ALJ's denial of Associates' April 17 amendment that created the need to amend but Associates' own action in choosing to rely on rule changes that it knew, or should have known, were not yet effective. Furthermore, we agree with the Board that it is significant to the determination of good cause that all the other short-spaced parties amended to acceptable sites within the time established by the ALJ.

II. DISCUSSION

8. Associates apparently does not disagree with the Board's characterization that there is a stricter foreseeability standard for demonstrating good cause for engineering amendments. Rather, Associates claims that the Board failed to consider two of the cases cited by Associates that it claims involved engineering amendments. Associates cites *Brownfield Broadcasting Corp.*, 88 FCC 2d 1054, 1058 (1982), for the proposition that the crucial period for determining due diligence commences, not upon the filing of the application, but rather at the time the applicant is apprised of the problem requiring amendment. Associates argues that it was unaware of the need to amend until the ALJ rejected its April 17 amend-

ment, thereby providing good cause for acceptance of its June 15 amendment. We disagree. It is abundantly clear that Associates was on notice from the HDO that it might have to amend. *Goodlettsville Broadcasting Company, Inc.*, 4 FCC Rcd at 8628 ¶ 9. Applying *Brownfield* to this case, it is our view that the notice provided by the HDO was sufficient to start the period for determining due diligence. In any event, Associates was apprised of the nature of the problem requiring amendment both by the WSEK-FM decision released on December 13, 1988, and the ALJ's order released on January 23, 1989, in this case. Instead of acting with due diligence to amend its application to provide for an acceptable site, Associates chose to file an amendment to retain its existing site based on rules that were not yet effective. It knew, or had reason to know, that this approach was extremely risk-laden. Having chosen this extremely risk-laden approach, we do not believe it has satisfied the due diligence principle established in *Brownfield*.

9. Similarly, Associates' claim that the Board failed to consider its citation to *The Old Time Religion Hour, Inc.* (*O. T. R. H.*), 54 RR 2d 989, 992-93 (Rev. Bd. 1983) (subsequent history omitted), is unavailing. *O. T. R. H.* involved a main studio location amendment which is not subject to the stricter foreseeability standard applying to engineering amendments. Here, the stricter standard applied. Thus, the general propositions which Associates attempts to extract from *O. T. R. H.* have no applicability to the Board's decision in this case.[4] In addition, the Board in *O. T. R. H.* relied on the same cases which Associates relied on in this case and which the Board addressed and distinguished in its present order. 4 FCC Rcd at 8629. Thus, the Board's failure to discuss the implications of *O. T. R. H.* for this case is inconsequential.

10. Finally, Associates argues that the ALJ erred by not designating a transmitter site issue against Associates before dismissing its application. We find that the ALJ properly dismissed Associates' application after determining that Associates had no viable transmitter site, and that it lacked good cause to amend to specify a new one. *See Shoblom Broadcasting, Inc.*, 95 FCC 2d 444, 446 (Rev. Bd. 1983), rev. denied, FCC 84-119 (April 2, 1984), aff'd per curiam sub nom. *Royce International Broadcasting Company v. FCC*, 762 F.2d 138 (D.C. Cir. 1985), cert. denied, 474 U.S. 995 (1985). Although the Board did not specifically address the question posed by Associates, a similar question was addressed by the Board in *Shoblom* where the applicant argued that its application should not have been dismissed but designated for hearing. There the Board said:

> The operative question is: did Royce have reasonable assurance of the site when it said it did. It clearly did not. Having known "at least as early as January 1981" that its originally-proposed site was unavailable (citation omitted) Royce's application became patently defective at that point, and anytime thereafter the defect could only be cured by an amendment accompanied by a suitable good cause showing. Royce's October 22, 1982 amendment failed that test (citation omitted) and its present bootstrapping efforts are suspect. But the time for amendments or other redemptive acts has long passed, and Royce's "fatal deficiency" (lack of a viable transmitter site) (citation omitted) has become terminal.

Shoblom Broadcasting, Inc., 95 FCC 2d at 446 ¶ 4.

11. Associates argues that the ALJ's reliance on *Shoblom* was misplaced because in *Shoblom*, the applicant had no transmitter site, whereas Associates maintained a site even though the site became short-spaced. We disagree. The critical point in *Shoblom* was not the unavailability of a site *per se*, as Associates suggests, but whether the applicant had a viable site with which to prosecute its application. Associates, like the applicant in *Shoblom*, had no viable transmitter site and it lacked good cause to amend to specify a viable site.[5] With no substantial and material question of fact to be determined concerning Associates' transmitter site,[6] it became a ministerial task for the ALJ to dismiss Associates' application.[7]

III. ORDER

12. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 1.115(g), the Application for Review of Goodlettsville Associates filed January 22, 1990, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Additional pleadings filed in this proceeding are an Opposition to Application for Review filed February 5, 1990 by Goodlettsville Broadcasting Company, Inc. (GBC) and the Mass Media Bureau's Opposition to Application for Review (Bureau) filed February 6, 1990.

[2] Originally 22 applications were designated for hearing in this proceeding.

[3] Associates was expressly identified as one of the seven short-spaced Goodlettsville applicants. *See Report and Order*, 4 FCC Rcd 3441, 3445 n.18 (1988).

[4] We note that, even if *O. T. R. H.* were applicable to this case, it would not dictate a different result. In *O. T. R. H.*, the Board held that the applicant was duly diligent in seeking to amend to a new main studio site because, among other things, the applicant had made reasonable efforts following the designation of the main studio location issue to justify its orginally proposed location and the amendment would cause no disruption to the hearing process because it was filed five months before the hearing began. In contrast, Associates had no reasonable basis to expect its first amendment to be acceptable because it relied on rules which it knew, or had reason to know, were not then in effect. Moreover, as GBC points out in its Opposition to the Application for Review, Associates' June 15 amendment had the potential to be disruptive to the proceeding because it was filed on the last day of the hearing, after the joint engineering exhibit of the parties had been completed and received into evidence.

[5] Even if the new spacing rules had become effective in time for Associates to rely on them, see n.4 above, it is not clear that Associates could have successfully employed those rules to specify a viable site using its originally proposed transmitter site. GBC notes in its Opposition to the Application for Review that Associates' April 17 amendment did not fully comply with the new engineering guidelines because it sought a waiver for a larger short-spacing area than allowed by the new rules.

[6] Associates comments that the Commission's December 13, 1988 rule making order permitted, but did not require, short-spaced applicants to amend and did not threaten dismissal to those who did not amend. Whether or not Associates was ordered to amend, where there was no substantial and material question of fact remaining concerning the viability of Associates' proposed site, designation of a hearing issue was not necessary.

[7] Although no transmitter site issue was designated, Associates had the opportunity to present the same evidence and arguments it could have presented if a site availability issue had been designated in response to the motion to dismiss its application. Associates did, in fact, respond to the motion to dismiss.

Before the
Federal Communications Commission
Washington, D.C. 20554

BC Docket No. 82-282

In re Application of

MID-OHIO COMMUNICATIONS, INC. File No. BRH-790601F6

For Renewal of License of
Station WBBY(FM), Westerville,
Ohio

ORDER

Adopted: July 13, 1990; Released: July 23, 1990

By the Commission:

1. The Commission has before it an order upholding a Review Board decision which denied Mid-Ohio Communications, Inc. (MOC) renewal of station WBBY(FM) in Westerville, Ohio. *Mid - Ohio Communications, Inc.*, 5 FCC Rcd 940 (1990), *denying review of*, 104 FCC 2d 572 (Rev. Bd. 1986). *See also Mid - Ohio Communications, Inc.*, 104 FCC 2d 604 (I.D. 1985). The Commission agreed with the Board that MOC lacked candor and made misrepresentations to the Commission and that the foregoing misconduct warranted denial of MOC's license renewal. MOC now seeks reconsideration of the Commission's action.[1]

I. BACKGROUND

2. In a series of pleadings filed while this was a comparative renewal proceeding, MOC repeatedly represented that its 24.7 percent stockholder, Richard Nourse (Nourse), served and would continue to serve as WBBY(FM)'s full-time or 40 hour per week station manager. 104 FCC 2d at 606-07 ¶¶ 5-9. MOC claimed comparative integration credit based on these representations. The Commission concluded that MOC's claims that Nourse served as WBBY(FM)'s full-time station manager were lacking in candor and were misrepresentations. MOC deliberately failed to report that Nourse had outside employment with a family-owned automobile dealership which, if disclosed, would have undermined the credibility of his supposed role as station manager. Furthermore, the Commission concluded that a detailed examination of Nourse's participation in station affairs belied the claim that he could fairly be described as a full-time station manager.

3. MOC's petition for reconsideration largely reiterates arguments made in its application for review of the Board's decision, which the Commission denied. Thus, MOC again argues that (1) the Board improperly overturned the ALJ's favorable credibility findings and ignored uncontroverted evidence by MOC's witnesses, (2) the Board was biased against automobile dealers, (3) MOC had no obligation to report Nourse's outside employment, (4) MOC relied on advice of counsel,[2] (5) the record here does not demonstrate misrepresentation by clear, precise, and indubitable evidence, [3] and (6) MOC's conduct does not warrant disqualification.[4]

4. MOC's repetitious arguments provide no basis for granting reconsideration. *See WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff'd sub nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966). A petition for reconsideration of an order denying an application for review which fails to rely on new facts or changed circumstances may be dismissed as repetitious. 47 C.F.R. § 1.106(b). Nonetheless, our examination of MOC's petition for reconsideration persuades us that it would be desirable to restate the basis for our action to avoid the possibility of misunderstanding. Additionally, MOC's petition raises two new matters that warrant discussion.

II. BASIS OF PRIOR ACTION

5. During the period in which MOC made its representations that Nourse served as WBBY(FM)'s full-time or 40 hour per week station manager,[5] it failed to report that Nourse spent 2-3 days per week managing a family-owned automobile dealership in another city more than 100 miles from Westerville. Reporting was clearly necessary under 47 C.F.R. § 1.65 because Nourse's outside responsibilities were relevant to the validity of the claim that Nourse currently served and would continue to serve as full-time station manager.[6] Moreover, MOC specifically stated in one pleading that Nourse no longer worked at the automobile dealership and implied as much in another. 104 FCC 2d at 606 ¶¶ 5,7. The record indicated that MOC's attorneys informed MOC that a failure to report might be considered misleading.[7] MOC Exh. 1-R at 13. MOC's failure to disclose Nourse's outside employment under these circumstances represented a serious lack of candor.[8]

6. Moreover, an examination of the record indicated that MOC's characterization of Nourse as WBBY(FM)'s full-time station manager was not accurate. In this regard, the Commission upheld the Review Board's action reversing the ALJ on this point. Examining the record evidence, particularly the testimony of MOC's witnesses, the ALJ concluded that, although the record did not fully corroborate MOC's claim that Nourse was the full-time station manager, his duties substantially complied with MOC's claims. 104 FCC 2d at 623-24 ¶¶ 71-72. The Commission agreed with the Board that Nourse's duties as described could not reasonably be characterized as those of a full-time station manager and that MOC's claims were unrealistic and not made in good faith, especially given MOC's clear motive to exaggerate the significance of Nourse's role. Thus, the Board and Commission, while accepting the ALJ's basic factual findings, disagreed with the inferences he drew from those findings.[9] The Board also focused on aspects of the record that the ALJ did not specifically address; for example, the Board observed that MOC's principal, Carl Nourse, contradicted his prior testimony in attempting to bolster Richard Nourse's responsibilities at the station. *Id.* at 583-84 ¶ 26, 596 ¶ 41.

7. In the Commission's view, the record confirmed the inherent improbability that Nourse served as a full-time manager of WBBY(FM) while also managing an auto-

mobile dealership in a city 120 miles away. For example, during the relevant time period, Nourse's attendance at station management meetings declined continuously. 104 FCC 2d at 614 ¶ 39, 616 ¶ 47, 617 ¶ 54. Additionally, to support its claim that Nourse devoted 40 hours per week to station affairs, MOC attempted to rely on time Nourse spent while primarily involved at the automobile dealership, long distance telephone calls, visits to his parents' house and the like -- as opposed to his physical presence at the station. *Id.* at 617-18 ¶¶ 55-56. In the Commission's view, these activities did not comport with the Commission's definition of integration into management, and they corroborated the inference that MOC left a misleading impression when it described Nourse as WBBY(FM)'s full-time station manager, without qualification.

8. Similarly, the record indicated that Nourse's duties were not those of a station manager. Nourse's duties -- as described by MOC's own witnesses -- did not conform to the specific description given in MOC's pleadings.[10] As described by MOC's witnesses, Nourse's duties did not constitute the kind of fixed managerial responsibilities implied by the title "station manager." *See Minority Broadcasters of East St. Louis, Inc.*, 99 FCC 2d 264, 267 ¶ 6 (Rev. Bd. 1984), *modified*, 57 RR 2d 1390 (1985).[11] Rather, Nourse performed a miscellaneous collection of duties, which included assisting other station personnel, performing clerical and other nonmanagerial duties, and performing duties not specific to WBBY(FM). 104 FCC 2d at 614-17 ¶¶ 38, 43-44, 46, 49-52. Nourse did not even have an office at the station. MOC Exh. 1-R at 4-6. Indeed, MOC's main witness, Bryan McIntyre, was not comfortable with Nourse's designation as "station manager" (although he said that he considered Nourse's duties managerial). 104 FCC 2d at 583 ¶ 24.

III. NEW MATTERS

9. As noted, two matters in MOC's petition for reconsideration warrant further discussion. First, as previously mentioned, one of the reasons we cited for finding that Nourse was not a full-time manager of WBBY(FM) was that Nourse relied on time spent on such activities as long distance telephone calls to support his claim that he devoted 40 hours to station affairs. MOC argues that our finding is inconsistent with dicta in *Omaha TV 15, Inc.*, 4 FCC Rcd 730, 732-33 ¶¶ 14-24 (1988). MOC claims that this dicta indicates that integration credit may be given for management involvement without physical presence at the station.

10. The Bureau correctly observes that *Omaha TV 15, Inc.* did not modify the standard -- set forth in *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 395 (1965) -- that integration involves active participation in the day-to-day operation of the station. *Omaha* merely clarified that standard to indicate that a principal may receive credit for integration, although the principal is not physically present at the station five days a week. Thus, a proposal to work ten hours a day three days a week would be deemed equivalent to a proposal to work six hours a day five days a week. It did not imply that an applicant could receive credit for time not spent at the station. *See Greater Wichita Telecasting, Inc.*, 96 FCC 2d 984, 989-90 ¶ 10 (1984). In any event, we see no basis for MOC relying on our *Omaha* decision to assume that it could claim integration credit for Nourse, since *Omaha* was decided after the behavior at issue occurred.

11. Second, MOC appends to its petition for reconsideration numerous statements by community residents regarding the character of MOC's principal, Carl Nourse. These statements, however, are not part of the record in this proceeding, and MOC has not moved to reopen the record to receive them. And, in any event, MOC did not show the relevance of these statements. We will therefore not consider these statements.

IV. ORDER

12. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 1.106(b) the Petition for Reconsideration filed March 23, 1990 by Mid-Ohio Communications, Inc. IS DISMISSED in part as repetitious and is otherwise DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Now pending before the Commission are a Petition for Reconsideration filed March 23, 1990 by MOC, an opposition filed April 5, 1990 by the Mass Media Bureau, and a reply filed April 16, 1990 by MOC.

[2] In its petition for reconsideration, MOC relies on *WEBR v. FCC*, 420 F.2d 158, 166-68 (D.C. Cir. 1969). In that case, an applicant was assessed a comparative demerit for violating the Commission's reporting rules, its principal having relied on counsel to make the required report. An examination of the Board's decision, upheld by the court, gives no indication that the principal there intended to conceal information. *See Ultravision Broadcasting Co.*, 11 FCC 2d 394, 406 ¶ 28 (Rev. Bd. 1968). Thus, the misconduct was less serious than that involved here. In *Microband Corp. of America*, 44 RR 2d 1490, 1494 n.5 (1978), cited by MOC, advice of counsel was among the factors mitigating remote, nonbroadcast misconduct. *See also RKO General, Inc. v. FCC*, 670 F.2d 215, 231 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927, 457 U.S. 1119 (1982) (disqualifying RKO notwithstanding its claimed reliance on counsel). In any event, MOC has no basis for claiming reliance on counsel. *See* 5 FCC Rcd at 941 n.2.

[3] The Board correctly held that the applicable standard of proof is preponderance of the evidence. 104 FCC 2d at 600-01 ¶ 47. *See Steadman v. SEC*, 450 U.S. 91, 95-96 (1981); *Lewell Broadcasting, Inc.*, 86 FCC 2d 896, 913-14 (1981).

[4] MOC complains that the sanction imposed here is harsher than that imposed in *Centel Cellular Company of Virginia*, FCC 90-45 (Jan. 11, 1990). There, Centel agreed to make a voluntary payment of $1 million pursuant to a consent decree for alleged antenna lighting violations related to a helicopter accident without admitting the alleged violations. Hence, in that case, unlike this one, there was no adjudicated misconduct.

[5] In one pleading, MOC characterized Nourse's participation as "living, breathing, integration realized." 104 FCC 2d at 591 ¶ 34. Given this record, we rejected MOC's insistence (which

MOC reiterates in its petition for reconsideration) that Nourse proposed to work at the station only after grant of MOC's renewal application. *See, e.g.*, Petition for Reconsideration at 18.

[6] Because MOC sought comparative credit based on its representations concerning Nourse, MOC was responsible for their accuracy. Although the ALJ ultimately ruled that MOC was not entitled to credit for Nourse's participation, this fact does not in any way diminish MOC's responsibility for any misrepresentations made in connection with its comparative case. *See* Petition for Reconsideration at 13 n.25.

[7] *Compare Merrimack Valley Broadcasting, Inc.*, 92 FCC 2d 506, 520 ¶ 24 (Rev. Bd. 1982), *affirming*, 92 FCC 2d 523, 563-65 ¶¶ 173-85 (I.D. 1982). There an applicant failed to report changes in its principals' employment because the changes were not deemed to affect the principals' prospective integration commitments. Upon learning that this was erroneous, the applicant filed a corrective amendment.

[8] MOC maintained (and continues to do so in its petition for reconsideration) that this case is less egregious than *Bay Television, Inc.*, 95 FCC 2d 181, 182-85 ¶¶ 4-10 (Rev. Bd. 1983), *modified*, FCC 85-58 (Mar. 25, 1985), in which an applicant received a substantial comparative demerit. *See also Bay Television, Inc.*, 95 FCC 2d 190, 206-14 ¶¶ 65-92 (I.D. 1983). In *Bay*, the applicant's proposed general manager accepted outside employment. The Board faulted the applicant for not timely reporting its principal's subsequent resignation as general manager of the proposed station (based on the applicant's hope that the principal would reconsider and adhere to his integration commitment) until its opponent petitioned to enlarge the issues. Although not timely reporting the principal's resignation as general manager, the applicant in *Bay*, unlike MOC, did voluntarily report the principal's outside employment, as well as his resignation as an officer and director of the applicant (but not as general manager). *Id.* at 207 ¶ 68, 209 ¶¶ 75, 77. The applicant also voluntarily disclosed the principal's letter of resignation as general manager in response to a discovery request (although the applicant did not formally report the principal's resignation of that position until the petition to enlarge was filed). *Id.* at 211 ¶ 85. Additionally, in response to the petition to enlarge issues the applicant filed an affidavit by its principal which clarified that the principal had abandoned his integration commitment. Thus, in *Bay*, although the applicant did not report all relevant facts in a timely manner, significant information was reported and the inadequacies in reporting were rectified prior to the hearing, which tended to mitigate the deception present there. In contrast, in this case, MOC concealed Nourse's outside employment entirely until MOC's opponent accidently discovered it after the hearing. Moreover, MOC misrepresented throughout the proceeding that Nourse was its full-time station manager. We also note that, although the applicant in *Bay* received only a comparative demerit, that comparative demerit effectively resulted in the denial of its application.

[9] Contrary to MOC's contentions, our disagreement with the ALJ did not involve overruling any credibility findings or ignoring uncontroverted evidence. In particular, our analysis did not rely to any significant extent on the testimony of David Freeman, a witness whose testimony the ALJ questioned. Additionally, although we had occasion to disavow inappropriate comments by the Board about automobile dealers, we saw no indication that the Board's analysis of the record in any way reflected a bias against individuals in that line of business. Nor did we find it prejudicial that the Board's decision includes a discussion of "background and history" which has no decisional significance. 104 FCC 2d at 574-78 ¶¶ 3-11.

[10] For example, the record did not corroborate the claims that Nourse oversaw EEO compliance, that he conducted market research, that he was in charge of station public relations and station maintenance, and that he assisted in sales. *Compare* 104 FCC 2d at 606-07 ¶ 7 *with id.* at 584 ¶ 27, 614-15 ¶¶ 37, 42-43.

[11] The presence of continuing supervisory responsibility by a principal whose duties were roughly analogous to a business manager's warranted integration credit in *Miracle Strip Communications, Inc.*, 4 FCC Rcd 5064, 5065 ¶¶ 14-16 (1989), cited by MOC. The record here did not indicate that Nourse had the kind of continuing supervisory responsibilities that might reasonably be characterized as those of a full-time "station manager." Because MOC represented that Nourse in fact had that position, this is not a case, such as *Miracle Strip*, in which the issue was merely whether the applicant would receive credit for the claimed integration.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-336

In the Matter of

Amendment of Section 22.521(b) of the Commission's Rules to include Columbia, Missouri; Fort Myers, Florida; and Wilmington, North Carolina, in the table of assignments for air-ground stations in the Public Mobile Service	RM-6560 RM-6562 RM-6563

NOTICE OF PROPOSED RULE MAKING

Adopted: July 9, 1990; Released: July 20, 1990

By The Commission:

I. INTRODUCTION

1. On August 26, 1988, COM/NAV Marine (Comnav) filed Petitions for Rule Making, proposing: the assignment of air-ground channel 5, frequency 454.750 MHz, to Columbia, Missouri and the assignment of air-ground channel 6, frequency 454.700 MHz, to Wilmington, North Carolina. These requests were assigned Rule Making numbers RM-6560 and RM-6562, respectively. On October 11, 1988, Qualicom Message Center (Qualicom), filed a Petition for Rule Making, proposing the assignment of air-ground channel 10, frequency 454.875 MHz, to Fort Myers, Florida. This request was assigned Rule Making number RM-6563. The Commission has not made any prior assignment of an air-ground frequency to any of these cities. *See* the air-ground table of assignments, 47 C.F.R. Section 22.521(b).

II. BACKGROUND

2. Air-ground radiotelephone service is a public radio service between a base station and airborne mobile stations. In creating the air-ground service, the Commission adopted the goal of encouraging the provision of nationwide service utilizing the minimum amount of spectrum necessary. The Commission recognized that its allocation of 12 air-ground channels would permit nationwide service if the channels were sufficiently separated. *Air-Ground Service*, 22 FCC 2d 716 (1969).

III. DISCUSSION

3. Petitioners state that these areas have significant aviation activity and are centers for commercial and/or government activity and that there is an unsatisfied need for air-ground radiotelephone service. According to the petitioners, present air-ground stations are inadequate to serve these needs due to the limited range of the existing stations and their distance from the areas identified in the petitions.

4. In view of the apparent need for air-ground communications service for the above areas, the Commission proposes to amend 47 C.F.R. Section 22.521(b) to assign working channel 5 to Columbia, Missouri; working channel 6 to Wilmington, North Carolina; and working channel 10 to Fort Myers, Florida, as set forth in the Appendix to this notice.

IV. PROCEDURES FOR AMENDMENT OF AIR-GROUND TABLE OF ALLOTMENTS

5. The Commission invites comments on this proposal. The procedures to be followed in submitting comments in this proceeding are similar to those followed in proceedings to amend the FM or Television Table of Assignments in Section 1.420 of the Commission's rules. The procedures are discussed below.

6. *Cut - off procedures*. The following procedures govern the consideration of filings in this proceeding:

(a) Counterproposals made in this proceeding will be considered if they are made in initial comments so that parties may comment on them in reply comments. Counterproposals will not be considered if made in reply comments (*See* Section 1.420(d) of the Commission's rules).

(b) Petitions for Rule Making which conflict with the proposal of this Notice will be considered as comments. Public notice of such treatmemt will be given so long as the petitions are filed before the date for filing initial comments. If they are filed after that date, they will not be considered in connection with the decision in this proceeding.

7. *Dates and service*. Under the procedures set out in Section 1.415 and 1.420 of the Commission's rules, interested parties may file comments on or before **September 10, 1990** and reply comments on or before **September 25, 1990.** All submissions made by parties to this proceeding or in behalf of such parties must be made in written comments, reply comments or other appropriate pleadings. These comments and reply comments must be accompanied by a certificate of service (*See* Section 1.420(a)--(c) of the Commission's rules). Reply comments must be served on the person(s) who filed comments.

8. *Number of copies*. Under Section 1.420 of the Commission's rules, an original and four copies of all comments, reply comments, pleadings, briefs or other documents must be submitted to the Commission.

9. *Public inspection of filing*. All findings made in this proceeding are available for inspection during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

V. EX PARTE PRESENTATIONS

10. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of the public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases

the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

11. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide, on the same day it is submitted, a copy of same to the Commission's secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in the person's previously filed written comments, memoranda or filings in the proceeding, must provide, on the day of the oral presentation, a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

VI. REGULATORY FLEXIBILITY ACT

12. We certify that the Regulatory Flexibility Act is not applicable to the rule changes we are proposing in this proceeding. In accordance with the provisions of Section 605 of that Act, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration at the time of publication of this *Notice* in the Federal Register. As part of our analysis of the proposal described in this Order, however, the Commission has considered the impact of the proposal on small entities. The action proposed herein will not have significant economic impact on a substantial number of small entities.

VII. PAPERWORK REDUCTION ACT OF 1980

13. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found not to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by that Act.

14. This proceeding is initiated pursuant to the provisions of 47 U.S.C. Sections 154 (i)-(j) and 303.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Proposed Rule Changes:

Part 22 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1083, as amended; 47 U.S.C. 154,303.

2. Section 22.521 is amended by adding locations and channels in paragrapgh (b) for Fort Myers, FL; Columbia, MO; and Rocky Mount, NC to read as follows:

Section 22.521 Air-ground radiotelephone service.

* * * * *

(b) * * *

Location	Channel
Florida:	
Cocoa	3, 11
Fort Myers	10
* * *	
Missouri:	
Columbia	5
Kansas City	2, 8
* * *	
North Carolina:	
Charlotte	2
Rocky Mount	11
Wilmington	6
* * *	

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Parts 0, 1, and 64 of
the Commission's Rules with Respect
to Delegation of Authority to the
Chief, Common Carrier Bureau, and
Technical Corrections and Deletions

REPORT AND ORDER

Adopted: July 9, 1990; Released: July 20, 1990

By the Commission:

I. INTRODUCTION

1. By this *Order*, we amend our delegation of authority to the Chief, Common Carrier Bureau. Specifically, we amend Section 0.291(b) of our rules with respect to authority concerning Sections 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 219, 220. In addition, we amend Section 1.791 to cross-reference correctly Part 32 of our rules. We also amend Section 64.902 to remove an outdated cross-reference contained in that rule. Finally, we remove several other outdated sections concerning carrier reporting requirements contained in Part 1 of our rules governing Commission practice and procedure.

II. DISCUSSION

A. Delegation of Authority.

2. This Commission's Common Carrier Bureau (Bureau) performs staff activities relating to the regulation of common carriers engaged in the provision of telecommunications products and services. Pursuant to our rules, the Bureau develops, recommends, and administers policies and programs for the regulation of entities furnishing interstate or foreign communications service and ancillary operations relating to the provision or use of such service. 47 C.F.R. § 0.91 (1989). In fulfilling this mission, the Bureau performs certain specific functions. Among these functions, the Bureau (1) administers this Commission's accounting and reporting requirements; (2) conducts and coordinates compliance and enforcement activities; and (3) obtains from carriers full and complete information necessary to enable this Commission to perform the duties and carry out the objectives for which it was created. 47 C.F.R. § 0.91(a), (g) (1989).

3. Section 0.91(h) of our rules states that the Bureau "[c]arries out the functions of the Commission under the Communications Act of 1934, as amended, except as reserved to [the] Commission under § 0.291." 47 C.F.R. § 0.91(h) (1989). Section 0.291 of our rules addresses the delegation of authority from this Commission to the Chief, Common Carrier Bureau. This section delegates to the Chief "authority to perform all functions of the Bureau, described in §0.91, subject to the following exceptions and limitations." 47 C.F.R. § 0.291 (1989). The rule then lists eight specific instances in subsections (a) through (h) in which the Bureau is denied delegated authority. These two rules, read together, form the basis for and define the limits of the authority delegated by this Commission to the Bureau. Thus, under our current rules, the Chief, Common Carrier Bureau has broad authority to carry out the functions of this Commission relating to the regulation of telecommunications common carriers, subject only to the eight instances listed in Section 0.291(a) through (h) in which this Commission specifically reserves authority unto itself.

4. The eight reservations of authority contained in Section 0.291(a) through (h) are written in the negative and follow a general pattern. Each subsection identifies a particular regulatory activity or specific section of the Communications Act, and states that the Chief, Common Carrier Bureau *shall not* have authority to engage in that particular activity or to act under that specific section of the Act.[1]

5. The original version of subsection (b), promulgated by this Commission in 1975, contained just such a blanket prohibition of authority. That version of the rule denied the Bureau "[a]uthority to promulgate regulations and orders pursuant to sections 219 and 220 of the Communications Act of 1934, as amended."[2] However, this blanket prohibition of authority under Sections 219 and 220 proved too broad. On four separate occasions since 1975 we have seen fit to create discrete exceptions to the general prohibition of authority under Section 0.291(b). [3] Thus, our current rule delegates authority to perform four specific functions pursuant to Sections 219 and 220 of the Act, while denying authority to engage in any other activities under these two sections.

6. We have reviewed the current structure of Section 0.291(b) and conclude that a revision thereto will facilitate the prompt and orderly conduct of this Commission's business. The numerous amendments to Section 0.291(b) since 1975 represent a recognition by this Commission that the original prohibitory language of the subsection was too broad. Therefore, rather than continuing to add specific exceptions to the general prohibition of authority under subsection (b) as the need arises, we have decided to limit the scope of the prohibition itself. By limiting the sweeping nature of the prohibitory language, we eliminate the need to identify specific exceptions to the prohibition.

7. There is one major area of authority under Section 220 of the Act that we deem necessary to reserve to this Commission and thus deny to the Common Carrier Bureau -- the authority to prescribe permanent depreciation rates for common carriers pursuant to Section 220.[4] Under the revision of Section 0.291(b) we adopt today, the Bureau is prohibited from performing only this function. This approach delegates the balance of authority under Sections 219 and 220 of the Act to the Chief, Common Carrier Bureau pursuant to Sections 0.91 and 0.291 of our rules. This authority incorporates all previous positive grants of authority contained in former Section 0.291(b)(1-4).[5] Moreover, this delegation of authority enables the Bureau to carry out additional functions previously prohibited by former Section 0.291(b). These additional functions include, but are not limited to, issuing orders concerning this Commission's right of access to, and inspection and examination of, the accounts,

records, memoranda, documents, papers, and correspondence of carriers under Section 220(c) of the Act, and ordering forfeitures under Section 220(d) of the Act.[6]

B. Technical Corrections and Deletions.

8. We also make certain technical corrections and deletions to Part 1 of our rules with respect to reporting requirements of common carriers. We amend Section 1.791 to cross-reference correctly Part 32 of our rules, which superseded Part 31 on January 1, 1988.[7] In addition, we remove certain sections which contain outdated reporting requirements and cross-reference other rules which we have previously removed. Thus, we remove Sections 1.792,[8] 1.801,[9] 1.804,[10] and 1.812.[11]

9. Finally, we amend Section 64.902 to remove an outdated cross-reference to Section 31.01-11. As mentioned above, Part 32 superseded Part 31 in 1988; thus, the cross-reference to Section 31.01-11 currently contained in Section 64.902 is now obsolete.

III. ADMINISTRATIVE MATTERS

10. Because these amendments concern rules of agency organization, procedure, or practice, the notice and comment provisions of the Administrative Procedure Act are not applicable. *See* 5 U.S.C. § 553(b)(A). *See also* 47 C.F.R. § 1.412(b)(5) (1989).

11. The rule changes contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 5(b), 5(c)(1), 219, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 155(b), 155(c)(1), 219, and 220, that Parts 0, 1, and 64 of the Commission's Rules ARE AMENDED as set forth in the Appendix below.

13. IT IS FURTHER ORDERED that because they concern rules of internal Commission organization, procedure, or practice these amendments are effective upon publication in the Federal Register. *See* 5 U.S.C. § 553(d); 47 C.F.R. § 1.427(b) (1989).

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Parts 0, 1, and 64 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0 -- COMMISSION ORGANIZATION

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

Subpart B -- Delegations of Authority

2. The authority citation for Subpart B continues to read as follows:

AUTHORITY: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

3. Section 0.291 is amended by revising paragraph (b) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(b) *Authority concerning section 220 of the Act.* The Chief, Common Carrier Bureau shall not have authority to promulgate regulations or orders prescribing permanent depreciation rates for common carriers, or to prescribe interim depreciation rates to be effective more than one year, pursuant to section 220 of the Communications Act of 1934, as amended.

* * * * *

PART 1 -- PRACTICE AND PROCEDURE

4. The authority citation for Part 1 continues to read as follows:

AUTHORITY: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

Subpart E -- Complaints, Applications, Tariffs, and Reports Involving Common Carriers

5. Section 1.791 is revised to read as follows:

§ 1.791 Reports and requests to be filed under Part 32 of this chapter.

Reports and requests shall be filed either periodically, upon the happening of specified events, or for specific approval by class A and class B telephone companies in accordance with and subject to the provisions of Part 32 of this chapter.

6. Section 1.792 is removed.

7. Section 1.801 is removed.

8. Section 1.804 is removed.

9. Section 1.812 is removed.

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

10. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

Subpart I -- Allocation of Costs

11. Section 64.902 is revised to read as follows:

§ 64.902 Transactions with affiliates.

Except for carriers which employ average schedules in lieu of determining their costs, all carriers subject to §64.901 are also subject to the provisions of § 32.27 concerning transactions with affiliates.

FOOTNOTES

[1] *See, e.g.*, 47 C.F.R. § 0.291(a) (1989) (prohibition of authority concerning applications); 47 C.F.R. § 0.291(c) (1989) (prohibition of authority concerning section 221(a) of the Act).

[2] *See* 40 Fed. Reg. 7451 (1975).

[3] *See* 41 Fed. Reg. 30648 (1976) (granting Bureau authority to approve interim depreciation charges); 50 Fed. Reg. 18489 (1985) (authority to approve release of certain auditing information to state public utility commissions); 51 Fed. Reg. 13230 (1986) (authority to act on Freedom of Information Act requests for information); and 52 Fed. Reg. 35918 (1987) (authority to approve or prescribe specific data, computer format and media for reports filed pursuant to Part 43 of the Rules).

[4] This Commission has previously delegated to the Chief, Common Carrier Bureau authority to "approve depreciation charges to operating expenses [of common carriers] *on an interim basis* subject to commission prescription prior to the end of January of the year following that in which interim approval is given." 47 C.F.R. § 0.291(b)(1) (1989) (emphasis added). *See* n.3, *supra*. The revised Section 0.291(b) adopted today expressly denies the Bureau authority to prescribe interim depreciation rates to be effective more than one year.

[5] As mentioned in paragragh 6, *supra*, by limiting the scope of the prohibition contained in subsection (b), we eliminate the need to identify specific exceptions to the prohibition. We wish to make clear, however, that the four exceptions contained in former Section 0.291(b)(1-4) do not fall within the limited scope of the prohibition of authority we adopt today. Thus, although we no longer identify these specific positive delegations of authority under Section 0.291(b), we emphasize that our action today does not in any way prohibit or circumscribe the Bureau's authority to act in these four areas. The delegated authority granted generally to the Chief, Common Carrier Bureau under Section 0.291(b) adopted today includes, but is not limited to, the authority to: (1) approve depreciation charges to operating expenses on an interim basis subject to subsequent Commission prescription; (2) approve the release to state public utility commissions such information as the Bureau may obtain during the course of its audit activities which falls within the common interest and jurisdiction of the Commission and the states; (3) act on requests for information filed pursuant to the Freedom of Information Act, 5 U.S.C. 552, including authority to furnish copies of documents and other records; and (4) approve or prescribe the specific data to be entered on, and the computer format and media for, common carrier reports filed pursuant to the provisions of Part 43 of this chapter. *See* former Section 0.291(b)(1-4), 47 C.F.R. § 0.291(b)(1-4) (1989).

[6] Because our action today affects only subsection (b) of Section 0.291 of our rules, the seven other specific prohibitions of authority contained in other subsections of the rule remain unchanged. These include the prohibition on Rule Making activity found in subsection (h). Thus, for example, the Bureau still would not be authorized to modify the rules pertaining to carriers' reporting requirements, or to change the accounting system prescribed in Part 32. 47 C.F.R. § 0.291(h) (1989).

[7] *See* 51 Fed. Reg. 43499 (1986) (removing Part 31 and adding Part 32).

[8] Section 1.792 cross-references Part 33, which was removed at 51 Fed. Reg. 43499 (1986).

[9] Section 1.801 cross-references Part 43 with respect to reports regarding telegraph carrier services. The applicable rule in Part 43 was Section 43.54, Reports regarding services performed by telegraph carriers. Section 43.54 was removed at 51 Fed. Reg. 45891 (1986).

[10] Section 1.804 cross-references Section 64.298, Summary reports. Section 64.298 was removed at 45 Fed. Reg. 3052 (1980).

[11] Section 1.812 cross-references Part 42 with respect to reports regarding the premature destruction of records. The applicable rule in Part 42 was former Section 42.7, Premature destruction. Former Section 42.7 was removed at 51 Fed. Reg. 32653 (1986).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-135

In the Matter of

Height and Power
Increases in the Public
Mobile Service

ORDER ON RECONSIDERATION

Adopted: July 3, 1990; Released: July 20, 1990

By the Commission:

I. INTRODUCTION

1. On June 29, 1989, the Commission released a *Report and Order (Order)* [1] adopting rule changes to permit antenna height and effective radiated power (ERP) increases for facilities authorized to operate in the Public Mobile Service (PMS).[2] In the *Order*, the Commission adopted an increase in permissible ERP, but not in height, in the 35, 150 and 450 MHz frequency bands and retained the current rules for height-power limitations in the remaining frequency bands of 43 MHz and 900 MHz. The Commission found that permitted increases in radiated power would foster more economical and efficient use of the spectrum, without creating interference to other licensees. Sections 22.100 (adding a blanketing interference rule), 22.505 (raising antenna height-power limits), and 22.506 (raising effective radiated power), of the Commission's Rules were modified to promote efficiency and innovation in the allocation and use of the electromagnetic spectrum. No further height and power limits were adopted out of an abundance of caution about potential electrical interference.

2. On August 10, 1989, TELOCATOR Network of America (TELOCATOR) and National Satellite Paging, Inc. (National) filed petitions for partial reconsideration of the *Order*. Megamessage, Inc. (Megamessage) and the National Association of Business and Educational Radio, Inc. (NABER) each filed petitions for reconsideration. Opposition and Reply comments were filed against the petitions. [3]

II. BACKGROUND AND CONTENTIONS OF THE PARTIES

3. The propagation characteristics for each frequency band used by licensees to provide PMS are affected uniquely by changes in radiated power and antenna height. Accordingly, in the *Order*, the Commission adopted an increase in permissible power from 500 watts to 600 watts in the 35 MHz band, an increase from 500 watts to 1400 watts in the 150 MHz band and an increase from 500 watts to 3500 watts in the 450 MHz band. Additionally, the Commission retained the present power limitations for four channels in the 150 MHz band[4] and for one channel in the 450 MHz band[5] adjacent to private radio services because an increase in permissible radiated power at these frequencies might cause interference to private radio services. Moreover, the Commission retained the present power limitations in the 43 MHz band because any further increase in power would cause increased interference to television sets. Similarly, in the newly adopted rules, the Commission did not permit increases in permissible antenna heights because of an inability to predict co-channel interference with other Commission licensees using existing Carey calculations.[6] The *Order* did, however, allow the three nationwide paging channels in the 931 MHz band to operate without height restrictions since each of the channels is controlled nationwide by one entity and will not cause interference to other licensees. Additionally, as suggested by staff and commenters in the NPRM, the *Order* adopted a blanketing rule using the formula which calculates the interference area used in Section 73.318 of the Rules.[7] The blanketing rule delineates the responsibility of the carrier and fosters efficient resolution of interference problems to electronic equipment without the necessity of Commission intervention.[8]

4. In its petition for partial reconsideration, TELOCATOR raises five issues. First, it asserts that the decision to retain the existing radiated power limit of 500 watts on radio common carrier (RCC) frequencies 152.24, 152.84, 158.10, 158.70 and 454.025 MHz in order to avoid interference to adjacent private radio channel licensees, overstates the potential for interference and overlooks the less restrictive alternative the Commission could adopt to require licensees to engage in cross-service coordination.[9] In his comments, John E. Sonneland, President of Courtesy Communications (Sonneland) supports TELOCATOR's petition. Second, TELOCATOR contends that the Commission's decision to retain height restrictions on all frequency bands because of the inaccuracy of established standards for determining co-channel interference at heights above 500 feet, ignores the alternative of using developmental licensing to resolve those concerns. Third, TELOCATOR argues that radiated power in the 900 MHz band should be increased because such increases would permit fewer transmitters to cover the same service areas and enable carriers to offer more efficient service to the public. Fourth, TELOCATOR asserts that the blanketing rule adopted in the *Order* is unclear, unnecessary, and discriminates against RCCs because other land mobile licensees are not regulated by a blanketing rule. Lastly, petitioner contends that the Commission overestimated the potential for TV interference in the 43 MHz band and suggests that the developmental procedures correctly used in this frequency band[10] would protect against such interference.

5. In its petition for reconsideration, Megamessage argues that the Commission should revise Sections 22.505(c) and 22.506(f) of the Rules to permit a maximum of 3500 watts ERP for the three nationwide paging frequencies because each of these three frequencies is utilized only by one licensee and therefore interference to other licensees on the same frequency is not at issue. Further, Megamessage contends that the frequency allocation plan for the nationwide paging band is adequate to prevent adjacent channel interference.

6. In its petition for partial reconsideration, National requests (1) clarification of the applicability of the "fill-in" provision in Section 22.117(b) of the Rules to network paging carriers[11] and (2) the Commission adopt an increase in permissible power for 900 MHz facilities.

7. In its comments, the Association of Maximum Service Telecasters (AMST) argues that the Commission should retain the blanketing rule and the height and power limitations on 43 MHz band frequencies in order to avoid interference to television receivers.

8. In its petition for reconsideration, NABER requests that the Commission not increase ERP on frequency 152.03 MHz, which is adjacent to private radio channel 152.0075 MHz, and frequency 152.51 MHz, which is adjacent to 152.48 MHz. NABER asserts that 152.03 MHz is 22.5 kHz removed from 152.0075 MHz, a frequency used for mobile stations in the Special Emergency Radio Service. NABER argues that without adjacent channel coordination for these two 150 MHz frequencies, the interference potential to Special Emergency Paging systems on 152.0075 is even greater than the interference potential between the other 150 MHz frequencies which are exempted by the *Order*. Similarly, NABER notes that 152.51 MHz is adjacent to 152.48 MHz which is the most heavily used private carrier paging channel and poses an adjacent channel interference problem on 152.48 MHz.

9. In opposition to NABER's petition, TELOCATOR asserts that the Commission should require common carrier licensees to coordinate frequencies for higher powered common carrier facilities operating on frequencies adjacent to private radio carriers which have base stations that have elevated receivers. TELOCATOR contends that its coordination proposal is more consistent with the Commission objective of enhancing spectrum efficiency and achieving increased competition and innovation, rather than enacting a complete ban on increased power for the five channels exempted from permitted power increases in the *Order* and the one-way paging channels which NABER specifies in its petition.

10. In its opposition to TELOCATOR's and National's petitions for reconsideration, Associated Public-Safety Communications Officers, Inc. (APCO) opposes any further increases in common carrier height and power limitations, particularly those proposed by TELOCATOR in its request for increased power for fill-in common carrier stations on the frequencies adjacent to private radio channels. APCO asserts that an increase in power for these specific facilities will cause intermodulation and desensitization interference to public safety operations,[12] thus causing a threat to the safety of life and property. Similarly, APCO supports the request of NABER to prohibit increased power on common carrier frequencies 152.03 MHz and 152.51 MHz, which are adjacent to two private radio channels.

11. In reply to APCO's opposition, Megamessage argues that APCO's concerns regarding the potential for intermodulation and desensitization interference is not a relevant concern for the three nationwide paging frequencies. Megamessage contends that APCO's alleged potential interference problems are caused by the use of non-linear equipment and installations. Therefore, Megamessage, in its reply, reiterates its request that the Commission adopt a maximum limit of 3500 watts of power for the three nationwide paging frequencies.

12. Similarly, TELOCATOR points out in its reply to APCO's opposition, that APCO's concerns regarding potential desensitization and intermodulation interference to public safety radio systems can be avoided either through cross-service coordination, developmental licensing, proper site management, and good engineering. TELOCATOR contends that intermodulation interference can be caused by a variety of sources, including non-radio common carrier operations, and that the prohibition sought by APCO is an overly restrictive remedy which is unnecessary and which would frustrate the Commission's goal of enhancing spectrum efficiency. Additionally, TELOCATOR asserts that APCO has failed to provide technical engineering studies to substantiate its assertions.

III. DISCUSSION

A. 43 MHz Band

1. Power

13. In the NPRM, the Commission proposed that the existing 500 watt ERP for the 43 MHz band be retained. Later in the *Order*, the Commission found that any additional benefits gained by increasing maximum permissible power did not offset the additional interference potential caused to television receivers. TELOCATOR asserts that the Commission's refusal to permit an increase in ERP ignores the fact that the increase is minimal and underestimates the safeguards afforded by the Commission's developmental procedures for 43 MHz stations. Furthermore, TELOCATOR requests that increased power be considered in low population areas and any interference problems could be resolved on a case by case basis. In opposition, AMST states that the Commission's decision to deny an increase in power for stations in the 43 MHz band is based on an extensive history of interference to television. AMST argues that where increasing interference is a certainty, authorizing any increase in power, even on a developmental basis, is inimical to the public interest.

14. In the NPRM and the *Order*, the Commission did not intend to allow an increase in interference to TV reception. Implementation of the present developmental, two-year survey program within two miles of each 43 MHz base station merely aids the Commission in resolving interference problems after TV interference has occurred. There is normally a long lag time between the discovery of the interference and the time the interference is actually resolved. Due to the limited nature of the surveys required by Section 22.501(a)(5) of the Rules to be conducted by the paging carrier, interference problems remain unresolved on numerous occasions, either because the general public is unaware of the cause of the interference or because the public is unaware of the proper forum to register a complaint. On the other hand, TELOCATOR's increase in proposed ERP from 500 watts to 600 watts, will add only 0.7 miles to the service radius of a 43 MHz base station.[13] This minor increase in the reliable service area contour does not justify a rule change because the benefit of increased flexibility afforded carriers using 43 MHz frequencies does not outweigh the additional TV interference which is likely to occur. Additionally, TELOCATOR's request that the power increase be permitted in sparsely populated areas is also denied. Given a long history of interference with TV receivers

from paging facilities operating at 43 MHz and the likelihood that operation at increased power levels will exacerbate this existing problem, we do not believe it is in the public interest to further increase the permissible power level for 43 MHz transmitters even in sparsely populated areas.

2. Height

15. The Commission, in the *Order*, denied TELOCATOR's request to allow increased heights for stations in the 43 MHz band because an increase in height would cause additional interference to television reception. TELOCATOR, in its petition for reconsideration, states that increasing permissible height will allow licensees to use fewer transmitters, thus eliminating some of the potential TV interference, which occurs in close proximity to the 43 MHz base stations. Additionally, TELOCATOR submits that any interference problems that would occur could be handled by granting developmental authority in this frequency band. AMST contends that, based on current interference problems, an additional increase in height is not justified.

16. We have reexamined the issue of raising the permissible antenna height limit in the 43 MHz frequency band without reducing ERP as proposed by TELOCATOR. If a paging system in the 43 MHz band is located within one mile or less of a television receiver, interference is likely to occur. The probable reason for the interference is the direct signal pickup by the intermediate frequency (IF) components of the television receiver. When this occurs, all television channels are affected.[14] One way to limit the amount of interference caused is to lower the field strength of the interfering signal in the near vicinity of the transmitter. Limiting the field strength can be accomplished in the following two ways: (1) by lowering the ERP of the station,[15] or (2) by raising the height of the transmitting antenna so that the area within the near vicinity of the transmitter is further removed from the main lobe of the vertical beam of the antenna.[16] While there may be a few cases where the higher height would allow the signal to pass over an obstruction, we believe that reconsideration of permissible height levels for 43 MHz frequencies is justified. By allowing increased heights, carriers can usually reduce the field strength near the transmitter and thus, reduce interference to television receivers. Additionally, since stations operating at higher heights have larger service areas, fewer transmitters would need to be used to cover a service area which would further reduce potential TV interference. Any interference that is caused still must be corrected in accordance with the developmental licensing procedures. Therefore, we grant TELOCATOR reconsideration and have modified the rules to permit licensees operating on the 43 MHz frequency band to increase antenna height without reducing power when they do not exceed existing interference contours.

B. Adjacent Channel Radio Systems

17. In the *Order*, the Commission modified the rules to permit increased power in the 150 MHz frequency band from 500 to 1400 watts ERP and in the 450 MHz frequency band from 500 to 3500 ERP. The Commission excluded five specific frequencies from the increased power limits and retained the current ERP limitations for those five frequencies. These frequencies were excluded to prevent the potential interference which might be caused to adjacent private radio channels. NABER has identified two additional frequencies which it claims should also be included in the exempted frequency class due to claimed potential adjacent channel interference. The following table lists all affected adjacent channels and their uses:

150 and 450 MHz BAND CHANNELS ADJACENT TO PRIVATE RADIO and COMMON CARRIER CHANNELS

PLMRS (MHz)	Frequency	Private Radio Service or Common Carrier Frequency Receiving Interference (MHz)	Use of Frequency Receiving Interference
	152.03	152.0075 Special Emergency Radio Service	Paging*
	152.24	152.27 Taxicab Radio Service	Base and Mobile
	152.51	152.48 Business Radio Service	Paging*
	152.84	152.87 Special Industrial Radio Service and Motion Picture Radio Service	Base and Mobile
		158.13 Power Radio Service	Base and Mobile
	158.10		
		158.07 Common Carrier	Mobile and Fixed**
		158.73 Police Radio Service	Base and Mobile
	158.70	158.67 Common Carrier	Mobile and Fixed**
	454.025	454.000 Petroleum Radio Service	Base and Mobile

* NABER argues that these frequencies should be included in the exempted class.

** Common Carrier Docket Number 87-120 permits these frequencies to be used for control or other point-to-point functions on a primary basis.

18. In the *Order*, the Commission declined to permit increases in ERP where the common carrier station operates on an adjacent channel to that used by private radio stations whose mobile or fixed point transmitters send signals that are received by antennas at high elevations above ground.[17] In its petition, NABER requests that the frequencies 152.03 and 152.51 MHz also be included in the list of frequencies which are not permitted to increase height or power because these frequencies are adjacent to private radio channels. In its opposition to TELOCATOR, APCO avers that increased height and

power for common carrier stations adjacent to private radio channels might cause desensitization and intermodulation interference to public safety operations.

19. In its petition, TELOCATOR argues that the Commission's concerns on adjacent channel interference are overstated and that the Commission should have considered requiring that common carrier licensees coordinate frequencies with private radio coordinators. TELOCATOR contends that using the Commission's theoretical separation distances outlined in the *Order*, 99% of the land area in the United States would be available for common carrier stations to operate at higher power. Additionally, TELOCATOR states that protection of mobile units (paging and two-way) from adjacent channel interference is impractical and is contrary to current Commission practice. TELOCATOR points out that the private radio paging stations on 152.48 MHz operates with high powers and is not required to provide any protection to mobile or paging units operating on the adjacent common carrier frequency 152.51 MHz, and that adjacent channel common carriers should not be subject to a 500 watt limitation if adjacent channel private systems are not subject to a similar limitation.

20. On reconsideration, we believe that the potential for adjacent channel interference to private radio carriers is not sufficient to justify a total ban on increased power in the *Order*'s five specified frequencies throughout the United States. Rather, we believe that providing carriers with increased flexibility in designing their systems is in the public interest and that increasing permitted power levels for all frequencies in the 150 and 450 MHz bands should be adopted as long as harmful interference can be prevented. Operation at higher power can be permitted, with appropriate safeguards, in such a way as not to jeopardize the use of channels by licensed users. We believe these goals can be achieved through much less intrusive regulation than the total ban on power increases adopted in the *Order*.

21. We have examined the matter of protecting adjacent channel mobile units and pagers on frequencies 152.0075 and 152.48 MHz as requested by NABER and find that the Commission's decision to exclude the frequencies 152.03 and 152.51 MHz from the increased power limits is not necessary. The potential for adjacent channel interference to receivers is greatest in close proximity to the common carrier transmitter, and any interference would be intermittent in nature. We should note that private radio systems do not offer any special protection to private radio or common carrier systems operating mobile units and pagers on adjacent channels, and we have not had any significant interference problems as a result of this arrangement. We see no public interest reason to provide private radio mobile units special protection to which common carrier mobile units are also not entitled.

22. In the case of common carrier stations on adjacent channels operating near a common carrier or private radio base station receiving mobile transmissions, different concerns are raised. The area of interference is potentially much greater because of the adjacent channel receivers trying to receive weak mobile signals, and because the interference is of a continuous nature since it occurs between fixed points. We believe that common carriers can employ increased powers without causing harmful interference on channels adjacent to private carrier and common carrier receive antennas if a proper separation distance is maintained. In determining the separation distance necessary to prevent interference, we will use the 70 dB selectivity figure that the Electronic Industries Association has adopted in its standards.[18] Using a received signal level of -125 dBw for 152 MHz band and -133 dBw for 454 MHz band, and assuming free space loss, we find a separation distance of 3.2 miles for the 152 MHz band and 4.4 miles for the 454 MHz band is appropriate. All applications proposing common carrier stations on channels operating with ERPs above 500 watts that are adjacent to private radio stations receiving mobile transmissions must submit a study of the Commission's Master Frequency File showing that the required separation distance to the adjacent channel has been met. In the case of an adjacent channel licensee, who can substantiate in an engineering showing (this showing must detail the station's equipment and the measurement used in determining such interference) interference caused by another adjacent channel licensee, the applicant last filed with the Commission, notwithstanding the separation distance between the adjacent channel stations, must take reasonable steps to reduce interference. In addition, any common carrier stations operating on 158.70 and 158.10 MHz at powers greater than 500 watt must submit an analysis of the common carrier land mobile base station cumulative staff study showing that they are located more than 3.2 miles from common carrier stations operating on the base channels 152.21 and 152.81 MHz, respectively.[19]

C. Height

(35, 150, and 454 MHz Band Stations)

23. In the *Order*, the Commission declined to permit stations to operate with powers above 500 watts along any radial where the height above average terrain exceeded 500 feet. The Commission found that the Carey curves used to predict service and interference contours underestimated the contours along the radials at heights higher than 500 feet height above average terrain (HAAT). The Commission did permit stations to maintain an ERP of 500 watts regardless of height because under the current method of restricting power, the reduction in ERP required is based on the average height above average terrain (AHAAT) of the eight cardinal radials.[20] Using this method, some of the radials may exceed the power limits that would be permitted if the power reduction were done on an individual radial basis. By adopting this procedure in the *Order*, the Commission stated that information gathered from these stations will be used to help develop new propagation curves and at the same time minimize the risk of co-channel interference.

24. In its petition, TELOCATOR contends that for the construction of additional facilities when the proposed interference contour does not exceed the existing interference contours of co-channel stations operating under the control of the same licensee, inaccuracy of the Carey curves is less significant than it would be for an initial construction proposal. Regardless of the accuracy of the Carey curves under the above circumstances, TELOCATOR, along with other commenters, argues that the Commission could grant developmental authorization until potential interference problems become known.

25. We disagree with TELOCATOR's assessment that stations operating at increased antenna heights and ERP are no different than stations operating under the current limits and that developmental authority is a viable alternative. As the Commission stated previously, heights high-

er than 500 feet above average terrain, the curves underestimate the interfering field strength. Therefore, TELOCATOR's comparison of Carey predicted interference contours of proposed stations at higher heights, where the curves are believed to be inaccurate, to stations operating at lower heights, where we believe the Carey curves to be accurate, is unreasonable. For this reason, we must deny TELOCATOR's request that stations operating above 500 watts and 500 feet AHAAT be authorized under developmental authority. Developmental authority was never meant to permit a whole new class of stations to operate while the Commission considered rules to govern these stations, and to deal with the risk of co-channel interference. Under our developmental rules, only a handful of select stations may be granted authority in order for our staff to gather the necessary information to develop rules with proper interference safeguards.[21] Therefore, TELOCATOR's proposal that we should authorize a large number of developmental stations, is rejected.

26. We will, however, adopt a modified interference procedure for stations that propose to operate with powers above 500 watts along individual radials that exceed 500 feet HAAT. A correction factor of 3 dB per octave will be added to the formula used to determine the required ratio of desired-to-undesired fields found in the Carey report.[22] The value for the correction factor will be determined from the following formula:

$$C = 10 \times \log(HAAT/500)$$

The formula for determining "R" from the Carey report would become:

$$R = A + C + K(L_d^2 + L_u^2 + T_u^2)^{1/2}$$

where C is the correction factor. This modification will permit greater flexibility to increase height over 500 feet above AHAAT. Co-channel interference will be prevented by modifying the separation distances between base stations. If this approach in practice leads to increased co-channel interference we can take appropriate action at that time to correct the problem, rather than using the *Order*'s more restrictive approach of prohibiting increased height in all circumstances.

D. 931 MHz Band

27. In the NPRM, the Commission proposed to grant unlimited ERP to common carriers operating in the 931 MHz band when the interference contours of existing co-channel stations are not exceeded. In the *Order*, the Commission denied TELOCATOR's request for increased antenna height and ERP limits in the 931 MHz band with the exception of permitting unlimited antenna height for the three nationwide paging channels. TELOCATOR's proposals were not adopted because its rationale for these increases was based on the issue of parity in the operating parameters between the 450 MHz private radio service and the 931 MHz common carrier radio services.[23] The Commission found that the 900 MHz private radio service and the 900 MHz common carrier service both have height and power limits of 1000 watts at 1000 feet above average terrain and that no change was needed for parity to exist between these two radio services.

28. In its petition for reconsideration, TELOCATOR argues that a comparison of 931 MHz common carrier channels to 450 MHz private radio channels was utilized "not to justify a particular level but to show the feasibility of such a level." TELOCATOR Petition at page 12. However, TELOCATOR did justify the need for increased antenna height and ERP by submitting facts which indicate that its proposal would improve service, reduce rates and increase competition. Additionally, TELOCATOR stated that adjacent and co-channel interference is unlikely because the frequency band is relatively uncongested and subject to different technical considerations than the other frequency bands used by common carrier services. TELOCATOR urges the Commission to adopt the engineering standards which it proposed in its comments to the NPRM. Other commenters argue that we currently do not have technical standards to resolve interference problems at powers and heights above 1000 watts ERP and 1000 feet AHAAT for stations in the 931 MHz frequency band. National requests that the nationwide paging licensees be permitted to add stations to their systems reguardless of coverage area pursuant to Section 22.117(b) of the Rules.

29. In order to address all of the proposals in the 900 MHz band, we will separate this discussion into three issues: (1) whether the nationwide paging channels should be permitted to operate with higher power; (2) whether to permit the non-nationwide 931 MHz licensees to exceed the existing height and power limitations; and (3) whether to grant nationwide paging licensees the request for permission to file for stations under Section 22.117(b).

30. First, with regard to raising the maximum permissible power for the nationwide paging channels, we find that raising the permissible power to 3500 watts ERP to be in the public interest because no harmful interference will occur to co-channel stations because each licensee controls a frequency throughout the nation. At the same time, allowing these licensees to raise the ERP to 3500 watts is in the public interest because increased power will enhance building penetration and help overcome man-made noise.[24]

31. Second, in regard to the request for increased height and power limits for non-nationwide paging frequencies in the 931 MHz frequency band, we find that TELOCATOR's arguments in support of this request are persuasive. The Commission finds that increasing the permissible height and power for 931 MHz radio common carriers will allow for greater flexibility for these paging systems to use fewer transmitters to cover the same geographic area. In addition, we find that any minor increase in desensitization or intermodulation interference are outweighed by the benefits to the public by gaining more efficient and lower cost services. Nevertheless, in examining TELOCATOR's proposal to determine a method to implement a new height and power limitation, we find several drawbacks to its proposal. First, the proposal does not provide for the protection of a newly authorized facility from co-channel interference. Second, in calculating interference from these stations which exceed the existing height-power limits, TELOCATOR's proposal included the cumulative effect of simulcast transmissions by multiple transmitters. Third, the proposal does not include a method to protect other 931 MHz applicants, should the underlying stations used to justify the grant of the higher antenna height and ERP facility be dismantled.[25]

32. Third, with regard to National's request, we deny permission for these licensees of the nationwide paging frequencies to file for additional facilities, without reguard to existing coverage, under Section 22.117(b) of the Rules. This issue was not raised in the NPRM or the *Order* and, therefore, under Section 553 of the Administrative Procedure Act, the Commission cannot consider the proposed rule in this proceeding.

33. We find that our current system of 931 MHz frequency allocation, based upon a standard separation distance of 70 miles, provides for the efficient assignment of channels. However, in order to increase permissible antenna height and ERP and to allow for the protection of existing and future stations from interference, certain modifications can be made to the current system of 900 MHz frequency allocation to accommodate increased height and power. Those modifications are as follows: The creation of five classes of stations based on the propagation curves that TELOCATOR has derived from the Okumura Report;[26] the formulation of a table that lists the required separation distances between each class of stations, and a table showing the service area and interference area for each class of station. (*See* Appendix 2) We believe that in taking these steps, we will enable licensees to enhance building penetration and cover larger areas with fewer transmitters while ensuring that co-channel interference does not occur.

E. Blanketing Interference

34. In the *Order*, the Commission adopted a blanketing rule stating that such a rule would delineate the responsibility of the carrier and foster efficient resolution of complaints caused by interference to electronic equipment by common carriers without the necessity of Commission intervention. In its petition for reconsideration, TELOCATOR contends that the blanketing rule is premature, and that the Commission should wait for further comment on whether significant interference problems will exist. It also questions whether the rule, which is the same as that used in the FM radio service, is appropriate for Part 22 operations. Additionally, TELOCATOR avers that if the blanketing rule is left in place, such a rule should be imposed on all land mobile services including private radio. In response to TELOCATOR, AMST argues that TELOCATOR's comments are without merit and that the blanketing rule should be affirmed.

35. Upon further consideration, we have re-examined the issue of blanketing interference and have decided that a rule on blanketing interference should be retained for now. We will, however, review the continuing need for the rule after two years of experience with it. In its petition, TELOCATOR asks us to address the following three issues: (1) whether to use the blanketing rule from the FM radio service, (2) whether to impose a blanketing rule on all land mobile services, and (3) whether significant interference problems exist.

36. First, we believe that the blanketing rule used by the FM radio service is appropriate for application in the common carrier mobile services. The 115 dBu field strength was determined to cause blanketing interference not because of the source of the interference, but rather because it is measured according to the types of devices receiving the interference. Since we are trying to protect the same devices as FM services are trying to protect, the formula is similarly applicable to common carrier services. Second, common carriers have longer operating time ("duty cycles") than other mobile services and, thus, interference may be more noticeable and continuous. Lastly, the Field Operations Bureau (FOB) believes that the rule is necessary to resolve blanketing interference problems. Therefore, at this time, we will continue to apply the blanketing rule to common carriers and will consider whether a blanketing rule for these other services will be necessary at some future time. We will review the continued need for the rule after two years of experience. We request that FOB monitor blanketing interference incidents involving radio licensees and report the findings to the operating Bureaus one year from the release of this order so that we can evaluate the continuing need for and coverage of the rule.

F. Filing Procedure

37. The processing staff of the Mobile Services Division is having difficulty in processing applications for height and power requests since this Docket became effective. Many applicants do not submit the call sign(s) and location number(s) of the station(s) that justify the filing under the new height-power rules. This lack of information is causing delays in the processing of these applications. Therefore, the Commission will require the filing of a map showing the interference contour(s) of the stations used to show compliance with the new rules and the interference contour of the proposed station. All station call signs and location numbers must be given. This requirement will not be an additional burden on the applicant because the information requested must be generated before an applicant can determine that they are permitted to file under the new height power rules.

IV. REGULATORY FLEXIBILITY ACT - FINAL ANALYSIS

38. **Reasons for action and objectives.** This reconsideration of the rule making action will enhance the efficiency of PMS operations because fewer transmitters will be needed to cover the same geographic area. In addition, building penetration will be increased, and the PMS systems' ability to overcome man-made noise will be improved. These rule changes will permit carriers to provide more effective service at lower cost and these savings could be passed on to subscribers.

39. **Issues raised by the public in response to the final analysis and petitions for reconsideration.** We have taken into account the various issues raised by the public in the petitions for reconsideration and reply comments. As a result of these comments, whenever possible, we have modified our rules so as to permit both economical and efficient use of the spectrum but without creating interference to other services. Based on suggestions by TELOCATOR and other commenters, we modify, in this order, our current rules and further amend Part 22 of the Rules to permit increased antenna height and radiated power, under certain circumstances.

40. **Reporting, record - keeping and compliance requirements.** PMS licensees will comply with Sections 1.1307(b) and 22.100(e) as required.

41. **Specific alternatives that could accomplish the same objectives.** We have determined no specific alternatives which could accomplish the objective achieved in this rule making order.

42. **Any Significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives.** We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary in order to carry out out duties under the Communications Act of 1934. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. A copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

43. **Paperwork Reduction Act Statement.** The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new information collection requirement on the public. The applicant, under Section 22.505 and 22.506 of the Rules, is now required to submit a copy of the contour map that the applicant prepared independently to determine if they comply with the Rules.

V. ORDERING CLAUSES

44. WHEREFORE, for the foregoing reasons, Part 22 of the Commission's Rules ARE HEREBY AMENDED as discussed herein and as shown in Appendix 3 below;

45. IT IS FURTHER ORDERED that the rule changes made herein WILL BECOME EFFECTIVE **September 24, 1990.**

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX 1

COMMENTS

Petitions for Reconsideration

Megamessage, Inc.

National Association of Business and Educational Radio, Inc.

John E. Sonneland, President of Courtesy Communications

Petitions for Partial Reconsideration

National Satellite Paging, Inc.

TELOCATOR Network of America

Opposition and Replies

Associated Public-Safety Communications Officers, Inc.

Association of Maximum Service Telecasters

Megamessage, Inc.

TELOCATOR Network of America

APPENDIX 2

The following table of heights and powers is used to classify the 931 MHz paging stations:

Average antenna height above average terrain*	Station class					
4001-5000	G	G	F	F	F	F
2826-4000	H	G	G	F	F	F
2001-2825	K	H	H	G	F	F
1401-2000	L	K	H	G	G	G
1001-1400	L	L	K	H	G	G
581- 000	L	L	L	L	K	H
0-580	L	L	L	L	L	L
	125	250	500	1000	1860	3500

Effective radiated power (watts)**

* Average of the eight cardinal radials.

** For power values falling between those listed above use the next higher figure.

The following table is used to determine the minimum required separation distance between stations in the 931 MHz band:

Station class	Minimum separation between co-channel stations				
L . .	70				
K . .	75	78			
H . .	80	83	86		
G . .	101	104	107	116	
F . .	139	142	145	154	171
	L	K	H	G	F

Station class

The reliable service area and interference area for one-way signaling stations in the 931 MHz band is as follows:

Class	Radius of Service Area (Miles)	Radius of Interference Area (Miles)
F	52	119
G	35	81
H	26	60
K	23	55
L	20	50

APPENDIX 3

RULES SECTION

Part 22 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 22 - Public Mobile Service

1. The authority citation for Part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U. S. C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U. S. C. 553), unless otherwise noted.

2. Section 22.117 is amended by revising introductory paragraph (b), paragraph (b)(1)(ii) and adding paragraph (b)(1)(iii) to read as follows:

Section 22.117 Transmitters

* * * * *

(b) Additional transmitters. Licensees may construct and operate additional transmitter locations on the same frequency without obtaining prior Commission approval provided:

(1) * * *

(ii) Applications for additional transmitters of 931 MHz band stations are required to certify that the proposed service and interference area(s) are totally encompassed by existing co-channel service and interference area(s).

(iii) Licensees must retain a copy of a completed table MOB III found in FCC Form 401 as part of the licensees' records and this shall be made available to the Commission upon request.

* * * * *

3. Section 22.502 is amended by adding a new paragraph (c) to read as follows:

Section 22.502 Classification of base stations.

* * * * *

(c) classes of stations in the 931 MHz Band:

The following table of heights and powers is used to classify the 931 MHz paging stations:

Average antenna height above average terrain*	Station class					
4001-5000	G	G	F	F	F	F
2826-4000	H	G	G	F	F	F
2001-2825	K	H	H	G	F	F
1401-2000	L	K	H	G	G	G
1001-1400	L	L	K	H	G	G
581-1000	L	L	L	L	K	H
0-580	L	L	L	L	L	L
	125	250	500	1000	1860	3500

Effective radiated power (watts)**

* Average of the eight cardinal radials.

** For power values falling between those listed above use the next higher figure.

4. Section 22.503 is amended by revising paragraph (d) to read as follows:

Section 22.503 Geographic separation of co-channel stations.

* * * * *

(d) The following table is used to determine the minimum required distance separation between stations in the 931 MHz band:

Station class	Minimum separation between co-channel stations				
L . .	70				
K . .	75	78			
H . .	80	83	86		
G . .	101	104	107	116	
F . .	139	142	145	154	171
	L	K	H	G	F

Station class

5. Section 22.504 is amended by revising paragraph (b)(2) to read as follows:

Section 22.504 Reliable service area.

* * * * *

(b)(2) The reliable service area and interference area for one-way signaling stations in the 931 MHz band is as follows:

Class	Radius of Service Area (Miles)	Radius of Interference Area (Miles)
F	52	119
G	35	81
H	26	60
K	23	55
L	20	50

The reliable service area is used to determine whether claims of economic competitive injury are considered. The reliable service area so defined is not entitled to protection from electrical interference from co-channel stations at interference distances greater than those listed.

* * * * *

6. Section 22.505 is amended by revising paragraph (c) to read as follows:

Section 22.505 Antenna height - power limit.

* * * * *

(c) Stations in the 35, 43, 152, and 454 MHz bands, operating in accordance with Section 22.506(f), may operate stations at 500 watts effective radiated power or less regardless of the average height of the station's antenna above average terrain.

(1) Stations in the 35, 43, 152, and 454 MHz bands, operating in accordance with Section 22.506 (f), that exceed 500 watts effective radiated power, shall calculate their interference contours along all radials exceeding 500 watts and 500 feet above average terrain using the following modification to the formula in the Carey Report for determining the ratio of desired to undesired fields "R":

$$R = A + C + K\,(L_d^2 + L_u^2 + T_u^2)^{1/2}$$

where C is determined from the following formula:

$$C = 10\text{xlog}(HAAT/500)$$

(2) Stations operating on the 931 MHz nationwide paging frequencies, 931.8875, 931.9125 and 931.9375 MHz, may operate at a maximum of 3500 watts without antenna height limitation. Stations in the 931 MHz band not operating on the 931 MHz nationwide paging frequencies may operate without regard to height-power reduction if the interference area of the proposed station does not exceed the interference area(s) of existing stations.

(3) An exhibit demonstrating compliance with this section must be submitted with the application. The exhibit must include a map showing the proposed interference contour/area and the interference contour(s)/area(s) used to justify filing an application under this section.

7. Section 22.506 is amended by adding paragraph (f) to read as follows:

Section 22.506 Power.

* * * * *

(f) Proposed base stations, other than those in the air-ground radio service, in the 43 MHz, the 931 MHz and and the 470-512 MHz bands whose interference contours/areas do not exceed the interference contour(s)/areas of existing co-channel station(s), which are operated under the control of the same licensee, may operate with the following power limits:

Frequency or Frequency Band	Maximum Effective Radiated Power
35 MHz	600 watts
152 MHz	1400 watts
158.10 MHz	1400 watts
158.70 MHz	1400 watts
454 MHz	3500 watts

All applications proposing the use of the frequencies 152.24, 152.84, 158.10, 158.70, and 454.025 MHz operating with effective radiated powers above 500 watts must show that their base stations are located a required distance from adjacent channel stations: 3.2 miles for the 152 MHz band and 4.4 miles for the frequency 454.025 MHz. All applicants for these adjacent channel frequencies must submit a study of the Commission's Master Frequency File showing that the required separation distances to the adjacent channel base stations have been met. In addition, any common carrier stations operating on 158.70 and 158.10 MHz at powers greater than 500 watts, must submit an analysis of the common carrier land mobile base station cumulative staff study showing that they are located more than 3.2 miles from common carrier stations operating on the base channels 152.21 and 152.81 MHz respectively.

Stations operating on the 931 MHz nationwide paging frequencies, 931.8875, 931.9125, 931.9375 MHz, may operate at a maximum of 3500 watts. Stations in the 931 MHz band not operating on the 931 MHz nationwide paging frequencies may operate at a maximum effective radiated power of 3500 watts if the interference area of the proposed station does not exceed the interference area(s) of existing stations.

An exhibit demonstrating compliance with this section must be submitted with the application. The exhibit must include a map showing the proposed interference contour and the interference contour(s) used to justify filing an application under this section.

FOOTNOTES

[1] This *Order* addressed the issues raised in a Notice of Proposed Rule Making (NPRM), 3 FCC Rcd 1710 (1988), requesting comments on proposed changes to the Commission's Rules regarding the increase of permissible antenna height and radiated power for PMS licensees when the proposed interference contour does not exceed the existing interference contours of co-channel stations operating under the control of the same licensee.

[2] Height and Power Increases in the Public Mobile Service, CC Docket No. 88-135, *Report and Order*, 4 FCC Rcd 5303 (1989).

[3] *See* Appendix 1 for a list of commenters.

[4] *See Order* at paragraph 13.

[5] An adjacent channel is defined, for the purpose of this Rule Making, to be any frequency 30 kHz or less apart in the 152 MHz band and any frequency 25 kHz or less apart in the 454 MHz band.

[6] Carey calculations are defined in Section 22.504 of the Commission's Rules and in the report by R. B. Carey entitled "Technical Factors Affecting the Assignment of Facilities in the Domestic Public Land Mobile Radio Service" (Carey Report), FCC Report No. R-6406 (June 1964).

[7] D (in miles) = .245 x $P^{1/2}$(kilowatts).

[8] Blanketing interference is the action of a powerful radio signal in close proximity to a receiver that renders the receiver unable to receive desired signals. The blanketing rule provides, *inter alia*, that licensees of new or modified stations must resolve all complaints of blanketing interference which are received by the licensee within one year of filing a "Notification of Status of Facilities," FCC Form 489, which indicates the licensee has commenced operations. *See* Section 22.100 of the Rules.

[9] Cross-service coordination, in this case, is defined as the coordination by the common carrier licensees with the certified private radio coordinators, in order to avoid and resolve potential interference problems.

[10] Currently, all 43 MHz PMS facilities are initially authorized on a developmental basis to provide service during a two year period. During this period, the licensees must conduct surveys to determine whether interference is being caused to TV receivers. If interference is caused, the licensee is required to resolve the interference or discontinue operations. *See* Section 22.501(a)(5) of the Rules.

[11] Specifically, National requests that the three nationwide paging channels be permitted to add additional locations by filing a Form 489 permissive change application in a manner similar to that currently permitted in the cellular radio service. *See* Section 22.117(b) of the Rules.

[12] Desensitization is the reduction in the receiver sensitivity due to the presence of a high power off-channel signal. Intermodulation is the process wherein two or more signals received by a non-linear device, such as radio components, produce additional signals having frequencies differing from but related to those received.

[13] 500 feet height above average terrain (HAAT) assumed.

[14] *See* "Interference to Television Reception from Paging Systems," FCC Field Operations Bureau Information Bulletin FO-6 (February 1986).

[15] In this reconsideration, we have already controlled this potential source of additional interference by not permitting any increases in ERP.

[16] This is accomplished because the gain of an antenna diminishes as the angle of radiation below the horizon is increased. The field strength is also reduced because the higher antenna is farther away from the affected television receiver.

[17] Mobile and paging receivers are assumed to operate at a level of approximately six feet above the ground.

[18] Electronic Industries Association EIA Standard RS-204-C, Minimum Standards For Land Mobile Communication FM or PM Receivers, 25-947 MHz (January 1982). We use this adjacent channel selectivity value rather than the one used in the *Order* because it is the minimum standard that the industry has determined would produce no harmful electrical interference.

[19] The base frequencies 152.21 and 152.81 MHz are paired with the mobile frequencies 158.07 and 158.67 respectively.

[20] Effective radiated power must be reduced as the average height above average terrain is increased. *See* Section 22.505 of the Rules.

[21] Even under developmental authorization, because of the large number of stations involved, the processing staff would have to formulate guidelines to help them determine when interference was harmful. These guidelines, because they are not rules, would be difficult to enforce.

[22] TELOCATOR in its comments to the NPRM stated that the adoption of any correction factor would cause discontinuities to the contours. TELOCATOR is correct. However, TELOCATOR has not demonstrated any deleterious effect of these discontinuities.

[23] In its comments to the NPRM, TELOCATOR provided no explanation for comparing 450 MHz private service parameters to 900 MHz common carrier service.

[24] This change could affect co-channel interference in neighboring countries such as Canada and Mexico. However, existing coordination procedures will ensure that this increase in power does not result in harmful intereference to licensees in neighboring countries.

[25] TELOCATOR requested several other engineering changes, including the manner in which HAAT is calculated, the effects of beam tilt, and other similar technical matters. These proposals pertain to all Commission engineering calculations not merely those that relate to height/power issues. Therefore, they are beyond the scope of this proceeding, and will not be considered herein.

[26] Y. Okumura *et. al.*, 16 Rev. Elec. Commun. Lab 825-873 (Sept. - Oct., 1968), reprinted at Land Mobile Communications Engineering (Brodson, *et. al.*, ed. 1967).

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 88-139

In the Matter of

Reorganization and Deregulation
of Part 97 of the Rules Governing
the Amateur Radio Services.

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990; Released: July 20, 1990

By the Commission:

I. BACKGROUND

1. On May 31, 1989, we adopted a *Report and Order* in this proceeding[1] that, *inter alia*, reorganized the amateur service rules and codified existing policies. The purpose of the reorganization was to create a regulatory environment that would encourage modern techniques, technology, and uses of amateur radio. Three petitions seeking reconsideration of various aspects of our action have been filed.[2]

II. PETITIONS

2. RTNDA seeks reconsideration of Section 97.113(c) of the Commission's Rules, 47 C.F.R. § 97.113(c). RTNDA requests that the Commission create an exception to the rule that amateur service stations may not engage in any form of broadcasting. The substitute rule would permit amateur stations to transmit communications to convey news information for dissemination to the public, if the information is directly related to an important news event and the information cannot be transmitted by other means because other voice communication systems have been disrupted or are not available at the information origination point. Alternatively, RTNDA requests that the immediacy condition in the safety of life or protection of property exception in Section 97.113(c)(1) be eliminated as a criterion for determining whether amateur service frequencies can be used to transmit communications to convey information for dissemination to the public. The RTNDA argues that retention of the immediacy requirement effectively prohibits news coverage that the Commission should encourage in the aftermath of a hurricane, tornado, or plane crash. According to RTNDA, even though the immediate threat to life or property no longer exists in the wake of a catastrophe, there is still an absence of other communications facilities to report the devastation or loss of life that has occurred. On August 21, 1989, the American Radio Relay League, Inc. (ARRL) filed an opposition to RTNDA's petition for reconsideration, asking that it be denied. The ARRL argues that amateur stations are not available for newsgathering or program production purposes. Further, it contends that reports concerning the aftermath of disasters, after safety of life and protection of property is assured, can be transmitted on frequencies available for broadcasting under Part 74 of the Commission's Rules.

3. Popkin requests that various rules that were adopted by the Commission in this proceeding be amended, including changes to reflect contemporary United States Postal Service terminology and licensing procedures. He also suggests some language changes in the interest of clarifying the rules.

4. Pagel requests that Section 97.303(b) of the Commission's Rules, 97 C.F.R. § 303(b), be amended to show that as of January 1, 1990, the amateur service is the primary user of the 1.25 meter band.

III. DISCUSSION

5. With respect to RTNDA's request for reconsideration, we are not persuaded that we should adopt either RTNDA's substitute rule or eliminate the immediacy factor from the current rule. Conveying information to the public about an important news event does not fall within the purposes of the amateur service. [3] In our view, the substitute rule offered by RTNDA would permit newsgathering. In this connection, the ARRL, in opposing the petition for reconsideration states:

> The term "important news event" in this connection is subject to broad and varied interpretation, as is the term "information directly related to." The RTNDA group does not specify what is considered an "important news event" or who would decide whether an event is important. Presumably, the news director of a broadcast station would make that distinction. To a news director, any news item is by definition an "important news event." In any event, his determination could hardly be determined to be a dispassionate analysis, since it is his job to "get the story on the air."[4]

6. We believe that any news information that is conveyed to the public using amateur service frequencies must involve the imminent safety of an individual or the imminent protection of property.[5] It is the immediate danger to the public that activates the exception. The immediacy requirement in the rule limits the exception to an extraordinary situation, such as a specific toxic material spill, a major earthquake, or unexpected flooding. It prevents the exception from being misapplied in instances that are not time-sensitive, for example, apprehension that society is generally endangered by rampant crime, environmental pollution, or highway traffic. Where there is no immediate danger, therefore, the communications should not be transmitted over amateur service frequencies. To hold otherwise could easily lead to a conversion of the amateur service to commercial or broadcasting purposes. We simply believe that allowing the amateur service frequencies to be used for broadcasting purposes would not be consistent with the purpose of the amateur service and the way it functions.[6] We decline, therefore, to adopt RTNDA's substitute rule or to eliminate the word "immediate" in the two places where it occurs in the current rule.

7. In Section 97.19(b) of the Commission's Rules, 47 C.F.R. § 97.19(b), Popkin requests that the rule indicate that it is not necessary to obtain a replacement license for

a lost, destroyed, or multilated license when filing for a modification or renewal of the license. This is consistent with our current practice and the rule section has been clarified as requested. In accordance with the petitioner's request, we have conformed the postal terms in Section 97.21 of the Commission's Rules, 47 C.F.R. § 97.21, to conform to the current usage of the United States Postal Service. In Section 97.119(b)(3) of the Commission's Rules, 47 C.F.R. § 97.119(b)(3), the petitioner requests that the word "VHF" be eliminated. The requested deletion has already been made.[7] We have also corrected a minor error in the last sentence of Section 97.119(c). In paragraph (c), the word "by" is corrected to read "with." In Section 97.301 of the Commission's Rules, 47 C.F.R. § 97.301, the petitioner suggests that, in the interest of clarification, the words "other than the FCC" be added after the words "United States government agency." The additional words would emphasize that the transmitting frequency bands specified in the rule are not available wherever the amateur service is regulated by any authority other than the Commission. The introductory text of this rule has been reworded to reflect the essence of the petitioner's suggestion.

8. Although not all of Popkin's requested amendments are discussed in detail, each suggestion has been carefully reviewed. Certain changes suggested by the petitioner, such as requiring the use of the optional nine digit zip code, were not adopted because persuasive reasons for their adoption were not given. The suggestion to permit the manual retransmission of time signals and weather information involves a substantive change that is beyond the scope of this proceeding.

9. With respect to frequency sharing of the 1.25 meter band between the amateur service and the Government radiolocation service, the amendment requested by Mr. Pagel is premature because the elimination of amateur use of the 1.25 meter band will not be implemented in the amateur service rules until the current land mobile proceeding concerning the 1.25 meter band is completed.[8]

10. We have also included in this *Memorandum Opinion and Order* certain technical amendments to Section 97.305 of the Commission's Rules, 47 C.F.R. § 97.305. These amendments are necessary to correct typographical errors in the Federal Register.

IV. PROCEDURAL MATTERS

11. In accordance with Section 605 of the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, the Commission certifies that the rules adopted herein will not have a significant impact on a substantial number of small business entities because these entities may not use the amateur radio service for commercial radio communication. *See* 47 C.F.R. § 97.3(a)(4).

12. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 *et seq.*, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

V. CONCLUSION

13. In view of the foregoing, and pursuant to the authority contained in 47 U.S.C. § 154(i), IT IS ORDERED that the petitions for reconsideration filed by The Radio-Television News Directors Association, *et al.* and Karl Pagel ARE DENIED, and that the petition for reconsideration filed by David Popkin IS GRANTED as indicated herein and IS DENIED in all other respects.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in 47 U.S.C. § 303(r), that Part 97 is amended as set forth in the Appendix below.

15. IT IS FURTHER ORDERED that the rule amendments shall become effective **September 10, 1990.**

16. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064 - 1068, 1081 - 1105, as amended; 47 U.S.C. §§ 151 - 155, 301 - 609, unless otherwise noted.

2. Section 97.19(b) is revised to read as follows:

§ 97.19 Application for a renewed or modified license.

* * * * *

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, P. O. Box 1020, Gettysburg, PA 17326.

* * * * *

3. The last sentence of Section 97.21 is revised to read as follows:

§ 97.21 Mailing address and station location.

* * * (A post office box, rural delivery service number, or general delivery is unsuitable as a station location).

4. Section 97.119(c) is revised to read as follows:

§ 97.119 Station identification.

* * * * *

(c) An indicator may be included with the call sign. It must be separated from the call sign by the slant mark or by any suitable word that denotes the slant mark. If the indicator is self-assigned, it must be included after the call sign and must not conflict with any other indicator specified by the FCC Rules or with any prefix assigned to another country.

* * * * *

5. The introductory paragraph of Section 97.301 is revised to read as follows:

§ 97.301 Authorized frequency bands.

The following transmitting frequency bands are available to an amateur station located within 50 km of the Earth's surface, within the specified ITU Region, and outside any area where the amateur service is regulated by any authority other than the FCC.

* * * * *

6. In the table in § 97.305(c), after the entries for the HF wavelength band, revise the VHF entries and add the UHF entries to read as follows:

§ 97.305 Authorized emission types.

* * * * *

(c) A station may transmit the following emission types on the frequencies indicated, as authorized to the control operator, subject to the standards specified in § 97.307(f) of this Part.

Wavelength band	Frequencies	Emission types authorized	Standards *see* § 97.307(f), paragraph:
* * * * *			
VHF:			
6 m	50.1-51.0 MHz	MCW, phone, image, RTTY, data	(2), (5).
-do-	51.0-54.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
2 m	144.1-148.0 MHz	MCW, phone, image, RTTY, data, test	(2), (5), and (8).
1.25 m	Entire band	MCW, phone, image, RTTY, data, test	(2), (6), and (8).
UHF:			
70 cm	Entire band	MCW, phone, RTTY, data, SS, test	(6), (8)
33 cm	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12)
23 cm	Entire band	MCW, phone, image, RTTY, data, SS, test	(7), (8), and (12)
13 cm	Entire band	MCW, phone, image, RTTY, data, SS, test, pulse	(7), (8), and (12)

* * * * *

FOOTNOTES

[1] *See* 4 FCC Rcd 4719 (1989).

[2] The petitioners are: Karl Victor Pagel (Pagel), David B. Popkin (Popkin), and Radio-Television News Directors Association, *et al.* (RTNDA).

[3] *See* Section 97.1 of the Commission's Rules, 47 C.F.R. § 97.1.

[4] Opposition to Petition for Reconsideration of ARRL at 9.

[5] Section 705 of the Communications Act of 1934, as amended, 47 U.S.C. § 605, excludes amateur radio communications from the privacy protections. Journalists, therefore, may listen to such communications and use the information conveyed therein as they wish. There is usually a plethora of such communications during a disaster because amateur stations are usually heavily involved in providing emergency communications.

[6] *See* 44 Fed. Reg. 20465 (1979). *See also* 50 Fed. Reg. 25241 (1985).

[7] *See Errata*, 4 FCC Rcd 6750 (1989).

[8] Amateur stations may continue to transmit in the 220-222 MHz segment of the 1.25 m band until such time as private land mobile and Government users are allowed access. The Commission, however, encourages amateur operators to begin an orderly transition of on-going operations from the 220-222 MHz segment to other amateur service frequencies to avoid an abrupt termination when the land mobile service rules are completed. *Report and Order*, 3 FCC Rcd 5287 (1988), and *Memorandum Opinion and Order*, 4 FCC Rcd 6407 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AMERICAN TELEPHONE AND TELEGRAPH COMPANY — File No. USP-89-(N)-086

MCI COMMUNICATIONS CORPORATION — File No. USP-89-(N)-092

Petitions for the Waiver of the International Settlements Policy for the USADirect and CALL USA Switched Voice Options Between the United States and Spain

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 1990; Released: July 20, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On August 11, 1989, American Telephone and Telegraph Company (AT&T) filed a petition for waiver,[1] File No. USP-89-(N)-086, pursuant to the Commission's International Settlements Policy (ISP),[2] for a change in the accounting rate for AT&T's USADirect service from Spain. [3] On September 19, 1989, MCI Communications Corporation (MCI) also filed a petition for waiver,[4] File No. USP-89-(N)-092, pursuant to the ISP, for MCI's CALL USA service from Spain. For the reasons expressed herein, we deny in full both waiver requests.

II. BACKGROUND

A. MCI Tariff Filing

2. On June 16, 1989, MCI filed with the Commission Tariff Transmittal No. 543 to revise MCI Tariff F.C.C. No. 1 to add Spain as a country from which travelers may terminate calls in the United States. Specifically, MCI proposed to initiate its CALL USA service from Spain[5] in order to permit a caller, using any telephone in Spain, to call a toll-free number and be connected with an MCI operator in the United States. The MCI operator, in turn, would forward the telephone call to its destination within the United States.

B. AT & T Petition and Informal Request

3. On June 23, 1989, AT&T filed a petition requesting that the Commission reject, or suspend and investigate, the MCI tariff revision.[6] AT&T asserted that MCI's tariff was unlawful because it constituted an unreasonable practice in contravention of Section 201(b) of the Communications Act in several respects. First, AT&T argued that MCI would be offering an international long distance option that "conflicts with the ISP in that Telefonica denies a competing U.S. carrier equivalent access solely because AT&T will not agree to the same unlawfully high accounting rates."[7] Second, AT&T argued that MCI could not begin service on the day proposed since it cannot offer service until such time as the accounting rate for such service has gone into effect and that cannot occur until 21 days after notification under the ISP.

4. Moreover, AT&T asserted that permitting the tariff to take effect would harm competition and, in the long-run, harm U.S. ratepayers. It stated that "this is particularly so when the harm to competition is the proximate result of precisely the sort of whipsawing the Commission has sought to prevent by its ISP."[8] AT&T observed that allowing the MCI tariff to become effective would cause irreparable damage to the reputation for utility of AT&T's calling card and also to the ability of U.S. carriers to negotiate accounting rates fairly with other Postal Telephone and Telegraph administrations (PTTs). Furthermore, AT&T argued that rejection or suspension is in the public interest because "unless the Commission dissuades foreign PTTs from using their monopoly control to exact supercompetitive accounting rates, through vigilant application of the ISP, the benefits of competition will be lost to the American public and reaped by PTTs."[9]

5. In addition to the abovementioned petition, AT&T filed an informal protest[10] noting that although MCI had filed a tariff to begin CALL USA traffic from Spain effective July 1, 1989, AT&T had not received any notification from MCI regarding this non-uniform accounting rate as required by the ISP. AT&T noted that it offers its USADirect calling option from 57 countries and that "[a]lmost invariably, the foreign carriers and AT&T settle their accounts regarding that traffic at the applicable rates for (International Long Distance (ILD)) calling."[11] AT&T added that the foreign carrier involvement in the USADirect or CALL USA message is no different than the foreign carrier involvement in a call dialed directly from that foreign country to the U.S. and that "[n]o higher accounting rate is paid because no higher accounting rate is warranted."[12] AT&T stated that "[i]n both instances, the originating foreign carrier incurs no operator costs for completion of USADirect calls."[13] AT&T asserted that MCI's ability to make the new tariffed offering results from whipsawing and that Telefonica was also pressuring AT&T to accede to the same rates. In this context, AT&T argued that MCI could not commence service without instituting the accounting rates for this option and could not institute the new accounting rate because it has failed to serve an accounting rate notification as required by the ISP.

C. MCI Reply

6. On June 30, 1989, MCI filed a reply to AT&T's petition and informal protest.[14] MCI noted that tariff filings made by nondominant carriers, such as MCI, are considered *prima facie* lawful and that AT&T had to meet a heavy burden, tantamount to a showing necessary to sustain a "request for stay," in order to warrant suspension, much less rejection, of MCI's tariff revisions. MCI asserted that the "anti-whipsawing" provision of the ISP is not applicable to this matter because the ISP only applies if more than one carrier offers a comparable service to a particular foreign jurisdiction. MCI maintained that its CALL USA service from Spain is unique and therefore

different from any comparable AT&T service, including USADirect. Specifically, MCI noted that MCI's CALL USA will afford its subscribers direct dial access from any telephone in Spain. MCI asserted that, in contrast, AT&T's USADirect service is limited to ten dedicated telephones and that Telefonica has stated that it considers AT&T's USADirect service "experimental" and "transitory."[15] Moreover, MCI added that AT&T itself has admitted that AT&T has temporary, slightly higher transitional accounting rate agreements (above the applicable ILD accounting rate) for USADirect calls with two foreign correspondents.[16] MCI asserted that the goal of the ISP is to assure service to the U.S. public at the least possible expense to the ratepayers and argued that its proposed CALL USA service from Spain complements, rather than violates, the ISP by permitting completion of calls from Spain at rates more favorable than existing rates from Spain.

D. AT & T Reply

7. On July 25, 1989, AT&T filed a response to MCI's submissions, asserting that adoption of MCI's position would be tantamount to accepting the proposition that the ISP can be ignored whenever a U.S. carrier chooses to do so by acceding to a demand in return for a benefit that gives the carrier preferential access.[17] AT&T stated that MCI's tariff for its CALL USA service from Spain must be rejected because: (1) the AT&T and MCI services are materially the same and subject to scrutiny under the ISP; and (2) when two or more carriers provide the same service but settle at different accounting rates the ISP requires rejection of the higher accounting rate that has been extracted in return for promises of benefits within the exclusive control of the foreign carrier. AT&T maintained that although AT&T's USADirect service is available from only 10 telephones, CALL USA and USADirect are materially the same service for the purposes of the ISP. AT&T stated that each is functionally equivalent to the other in satisfying the need of American consumers in Spain to make "plain old" voice calls to the United States through U.S. operators at U.S. tariffed rates. Finally, AT&T noted that it was willing to continue discussing any claim by Telefonica that justifies transitional, temporary accounting rates, different from the direct-dial International Message Telephone Service (IMTS) rates.[18]

E. MCI Tariff Order

8. On August 28, 1989, the Chief, Common Carrier Bureau, acting on delegated authority, issued an Order rejecting MCI's tariff transmittal.[19] The *MCI Tariff Order* specifically noted that MCI had failed to demonstrate that its CALL USA service from Spain is fundamentally different from either AT&T's USADirect service or other IMTS services from Spain[20] and therefore not subject to the notification requirements of the ISP. As a result, the *MCI Tariff Order* explained that, pursuant to the June 27, 1989, letter from the Chief, International Facilities Division,[21] should MCI wish to implement a non-uniform accounting rate for its CALL USA service from Spain, MCI must file an appropriate request for waiver with the Commission for review under the ISP. The *MCI Tariff Order* concluded that because MCI had not filed an appropriate request for waiver of the ISP for Commission review, the implementation of MCI's tariff revisions would violate applicable Commission rules and must be rejected.

III. SUMMARY OF PLEADINGS

A. AT & T's Notification

9. On August 11, 1989, AT&T filed a request to permit a change in the accounting rate for its USADirect service with Spain.[22] AT&T notes that, at present, the accounting rates (1.60 Special Drawing Rights (SDRs) per minute for peak period calls, and 1.20 SDRs per minute for off-peak period calls) that are in effect for ILD between the United States and Spain also apply to the USADirect option. AT&T requests, however, that from September 1, 1989, through August 31, 1990, AT&T be permitted to implement accounting rates of 1.95 SDRs per minute for peak period calls and 1.55 SDRs per minute for off-peak period calls for the provision of USADirect service from Spain.[23] AT&T states that after the first year, the applicable accounting rates for the USADirect option will be those generally in effect for ILD service unless the agreed-upon conditions for payment of an additional per-minute premium to the correspondent are met for either the second and/or third years after institution of the Agreement.[24] AT&T states that negotiations were concluded when AT&T agreed to make a retroactive, one-time payment of approximately $850,000 to cover the past three years that AT&T has offered USADirect at the ILD rate[25] and Telefonica agreed to introduce two-way International 800 Service between Spain and the United States at the ILD accounting rates.[26]

B. MCI Protest

10. On August 21, 1989, MCI submitted a letter protesting the filing of AT&T's notification on the grounds that AT&T's conduct leading up to the filing shows not only a complete and utter disregard for the ISP, but also a flagrant abuse of Commission processes.[27] MCI claims that AT&T used the ISP to oppose implementation of the accounting rate associated with MCI's CALL USA offering and thereby buy time to conclude an agreement with Telefonica at the same accounting rate level that MCI had successfully negotiated with Telefonica at a much earlier date. Moreover, MCI contends that AT&T's agreement contradicts the very position that AT&T had taken earlier against the MCI agreement. MCI argues that if AT&T were to prevail, AT&T will have successfully exploited and undermined the very policy which it used to delay MCI in order to avoid the embarrassment of MCI's launching its CALL USA service from Spain before AT&T's USADirect service. While MCI agrees that the ISP was devised with principles of international comity in mind, MCI states that when a carrier inappropriately uses the ISP to foster and promote its own self interest, the public interest is injured as competition is thwarted and the public is deprived of the benefits of new services. MCI concludes that AT&T's disregard for a critical Commission policy, abuse of Commission processes and undermining of the consumer interests has caused unwarranted delay in MCI's offering of its MCI CALL USA service from Spain. MCI asserts that, "at bottom," AT&T must not be rewarded by being authorized to implement its USADirect service from Spain before MCI's CALL USA is implemented.

C. AT & T Reply

11. On August 23, 1989, AT&T responded to MCI's informal protest stating that MCI's requested relief is inappropriate, unsupported, and that it should be denied.[28]

AT&T states its belief that the agreement it has reached with Telefonica is different from MCI's accounting rate arrangement, but notes that MCI has not filed its agreement and that, as a result, AT&T cannot be certain of the terms and conditions of MCI's agreement with Telefonica. AT&T asserts, however, that it appears that MCI reached an agreement to pay Telefonica a premium above the ILD accounting rate for an indefinite period,[29] while, in contrast, AT&T's Agreement is based on a recognition that the USADirect option is part of ILD service. AT&T states that more significantly, unlike MCI, AT&T has complied with the Commission's ISP requirements by filing an ISP notification letter and has established ILD-based accounting rates as benchmark rates for the USADirect option. AT&T states that MCI has neither alleged nor shown that AT&T's accounting rates are improper or unlawful under any of the principles the Commission enunciated when it established the ISP. AT&T adds that MCI does not even argue that the Commission should prohibit the Agreement from becoming effective. It notes that MCI only requests that AT&T be directed to refrain from implementing its USADirect option until MCI's CALL USA is available. AT&T argues that the Commission's decision concerning AT&T's accounting rate agreement for its USADirect option from Spain is wholly separate from the factors which underlay the Bureau's decision on the implementation of MCI's CALL USA option. AT&T states that it has complied with the ISP procedures, while MCI has not. Therefore, AT&T claims that a delay of the USADirect option is wholly inappropriate and that such relief is not encompassed within the remedies available under the ISP.

D. MCI Notification

12. On September 19, 1989, MCI filed a petition for waiver of the ISP,[30] informing the Commission of its intention to introduce MCI CALL USA and Call-Spain[31] services between the United States and Spain. MCI states that the proposed settlement arrangement would match the accounting rate and division of tolls in the AT&T notification. Moreover, MCI states that MCI and Telefonica have agreed to review the accounting rate for MCI CALL USA and Call-Spain after one year of service and that it is understood that the method for revision developed for AT&T will be applied.

IV. DISCUSSION

13. For over five decades, beginning with the *Mackay Radio* decision in 1936,[32] the Commission has regulated settlement arrangements between U.S. carriers and their foreign correspondents in order to ensure that foreign PTTs do not use the bargaining power created by their favored national position to obtain unduly favorable terms and conditions in their relations with U.S. carriers to the detriment of U.S. ratepayers. Specifically, the Commission has traditionally required that whenever multiple U.S. carriers provide the same service to the same foreign point, the operating agreements between such carriers and a foreign PTT have the same accounting, settlement and division of tolls arrangements.[33]

14. Current Commission policy and rules regarding the ISP were established in a proceeding initiated in 1985.[34] Specifically, in the *Report and Order* in CC Docket 85-204, *supra note* 2, the Commission adopted several modifications to, and clarifications of, the scope of its international settlements policy[35] as well as the procedures that are used to implement that policy. Among other things, the Commission concluded that the existing characteristics of the international voice services market made it necessary to apply the ISP to international voice services. As a result, the Commission extended to the international voice carriers all of the regulatory procedures, including the filing requirements, that already applied to the international record carriers (IRCs).[36] The Commission also concluded that although the public interest is generally best served by the continuation of the requirement that settlement agreements be uniform on parallel international routes, it would consider waivers to implement a non-uniform accounting rate on a case-by-case basis. The Commission noted that it would continue to evaluate waiver requests based on the factors, such as the possibility of lower collection rates, improved services, and increased competition, set forth in the *Uniform Settlement Rates* decision, but made clear that the carrier making the request would have the burden of proof that the waiver is in the public interest.[37]

15. More recently, in a separate proceeding, the Commission expressed concern that uniform international accounting rates that are above cost may adversely affect U.S. goals of open entry, nondiscrimination, and the promotion of technological innovation in international telecommunications.[38] The Commission noted that although there has been a definite downward trend in IMTS rates for calls that originate in the United States, there has not been a similar reduction in international accounting rates.[39] Moreover, the Commission noted that high accounting rates, and the depression of traffic volumes caused by high collection rates, may effectively serve as a significant barrier to entry for newer or smaller U.S. carriers. As a result, the Commission directed the Common Carrier Bureau to undertake a study of these issues.[40]

16. In December 1988, the Common Carrier Bureau reported to the Commission that, over the past several decades, the costs of international telecommunications facilities have declined to a fraction of their levels a generation ago, but that nominal accounting rates have not kept pace with either reductions in U.S. collection rates or reductions in international telecommunications facilities costs.[41] The Bureau noted that the most direct and reasonable solution to the present excessive net revenue outflow,[42] and the possible subsidy from U.S. consumers to foreign administrations that such an outflow may represent,[43] is a reduction in the international accounting rates to a level more closely related to the underlying costs of providing international telecommunications services. The Bureau also noted, however, that changes in foreign collection rate structures, such as reductions in foreign collection rates or the introduction of peak/offpeak pricing, would lead to more efficient use of carrier facilities that could benefit both U.S. and foreign consumers. At the same time, the Commission specifically noted that certain actions had been taken by foreign administrations, subsequent to the Commission's initial expression of concern over the U.S. balance of payments deficit, that represented important initial steps in moving accounting rates and collection rates for international telecommunications services closer to the costs of providing such services.[44]

17. In this *Order* we find that, based on Commission policy, precedent and the record before us, it is in the public interest to deny the AT&T and MCI requests for waiver. Not only can we not conclude that AT&T and MCI have demonstrated good public policy reasons for waiving the longstanding Commission requirement of uniform settlement rates, but we believe that we must take this opportunity to express our determination not to allow foreign correspondents to use competitive pressures to whipsaw U.S. carriers and to emphasize our continuing concern with the above-cost nature of international accounting rates.

18. Specifically, we note that neither AT&T nor MCI provides evidence of Commission precedent to distinguish USADirect or CALL USA from traditional IMTS for purposes of the ISP.[45] As a result, under existing Commission policy and ISP procedures, the Bureau must treat the AT&T and the MCI calling options as ordinary IMTS from Spain.[46] Consequently, we must treat the AT&T and MCI filings as requests for waiver of the Commission's ISP to permit a higher, non-uniform IMTS accounting rate for USADirect and CALL USA service, respectively, from Spain.[47]

19. Moreover, although not set forth in their filings, we must assume that AT&T and MCI are requesting that we permit a non-uniform, higher, accounting rate for USADirect and CALL USA service, respectively, from Spain based on the factors set forth in the Commission's ISP Orders.[48] It is well established Commission policy, however, that the applicant seeking a waiver of an existing rate bears the burden of proof to establish that the public interest would be better served by the grant rather than the denial of the waiver request.[49] With regard to the showings made by AT&T and MCI in the present case, we cannot conclude that these carriers have met their burden of proof. At most, AT&T and MCI have shown that there is a benefit that will inure to a very small class of U.S. ratepayers – that is, U.S. residents or travelers in Spain. Both AT&T and MCI decline, however, to discuss alternative ways to provide the same benefit without an increase in the U.S.- Spain IMTS accounting rate, such as offering a reduction in their existing collect call rates from Spain.[50]

20. In addition, neither AT&T nor MCI addresses the underlying issue of the potentially detrimental effects of allowing increases to go into effect for countries with international accounting rates that are already well above-cost. Indeed, even absent the requests made by AT&T and MCI in this proceeding, we have been concerned with the high level of the existing U.S.-Spain accounting rate for IMTS service. At 1.6 SDRs peak and 1.2 SDRs off-peak, the IMTS accounting rate with Spain appears to be substantially above cost by any reasonable measure.[51] Moreover, Telefonica's collection rate for IMTS service to the United States has traditionally been, and remains, quite high.[52] Therefore, while we view AT&T's and MCI's effort to offer U.S. consumers a lower-price option for calling from Spain to be commendable, the record suggests that Telefonica's costs to originate USADirect or CALL USA messages should be considerably below its share of the present U.S.-Spain accounting rate and that an additional payment to Telefonica through either a prospective per-minute, or retroactive lump-sum, surcharge is, based on the record before us, unjustified. Furthermore, the implementation of USADirect and CALL USA from Spain would allow Telefonica to lower its cost of providing service to the United States[53] while at the same time receiving a higher payment from U.S. carriers. While we recognize that Telefonica may have certain concerns with rate arbitrage for U.S.-destined traffic originating in Spain,[54] the surcharge here, which has not been cost-justified by either AT&T or MCI, or by Telefonica, can only be characterized as the whipsawing of competing U.S. carriers. Furthermore, neither AT&T nor MCI addresses the issue of whether the added costs associated with the proposed surcharge will be recovered from U.S. consumers and whether the implementation of a surcharge would set a negative precedent for U.S. carrier relationships with other countries.[55] Therefore, based on existing Commission policy and precedent, and the record before us, we cannot consider either a prospective per-minute, or retroactive lump-sum, surcharge to be in the public interest.[56] To the contrary, we reaffirm our intention to implement Commission policy to preclude the introduction of higher, non-uniform, international accounting rates that exceed the cost of providing service.

21. In conclusion, while we deny AT&T's and MCI's waiver requests, we welcome the interest of AT&T, MCI and Telefonica in lowering collection rates for IMTS service originating in Spain and terminating in the United States. Moreover, we express our hope that Telefonica will agree to U.S.-Spain IMTS accounting rates that are closer to cost.[57] We believe that such actions would permit U.S. carriers to further reduce their collection rates for IMTS service from the United States to Spain, and thereby result in greater U.S.-Spain traffic volumes and revenues, further strengthing the traditionally positive U.S.-Spanish telecommunications relationship.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that the AT&T and MCI petitions, File Nos. USP-89-(N)-086 and USP-89-(N)-092, for waiver to permit a higher, non-uniform IMTS accounting rate for USADirect and CALL USA services, respectively, from Spain are DENIED IN FULL.

23. IT IS FURTHER ORDERED that any retroactive or prospective per-minute or retroactive lump-sum surcharge payment to the Spanish telecommunications administration or any of its affiliates is DENIED.

24. IT IS FURTHER ORDERED that both AT&T and MCI are permitted under the Commission's international settlements policy to implement 800 and 800-like service with Spain at the prevailing uniform U.S.-Spain IMTS accounting rate.

25. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this Order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Richard Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *See* Letter from David Ritchie, General Attorney, AT&T, to Donna Searcy, Secretary, FCC (filed August 11, 1989). A copy of the agreement between AT&T and Telefonica (the Spanish Telecommunications Administration (TA)) (Agreement), dated July 28, 1989, is attached to AT&T waiver request.

[2] *See* Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes, CC Docket No. 85-204, 51 Fed. Reg. 4736 (1986)(*Report and Order); on recon.*, 2 FCC Rcd 1117 (1987)(*Reconsideration Order).*

[3] USADirect is an AT&T service that enables a caller, using a phone in another country, to call a toll-free number and be connected with an AT&T operator in the United States. That operator, in turn, forwards the telephone call to its U.S. destination. The charge for a USADirect call appears on the caller's monthly AT&T bill. AT&T settles the account as if it were a U.S.-outbound telephone call. AT&T currently provides USADirect service from ten dedicated telephones in Spain. The Agreement would permit AT&T to offer the USADirect calling option from all telephones in Spain.

[4] *See* Letter from John M. Scorce, Senior Regulatory Counsel, MCI, to Donna Searcy, Secretary, FCC (filed September 19, 1989).

[5] *See* MCI Telecommunications, Inc., Revisions to Tariff F.C.C. No. 1, Accounting Rate for CALL USA International Long Distance Service, Transmittal No. 543, 4 FCC Rcd 6670 (Com. Car. Bur. 1989)(hereinafter *MCI Tariff Order).*

[6] *See* MCI Telecommunications Corp., Transmittal No. 543, AT&T Petition to Reject or Suspend (June 23, 1989) (AT&T Petition).

[7] *Id.* at 3.

[8] *Id.* at 5. "Whipsawing" describes the manipulation of multiple U.S. carriers for purposes of obtaining more favorable rates. Generally, whipsawing occurs when a foreign PTT seeks modification of an accounting rate in a manner more favorable to the PTT; for example, a reduction in the rate paid by the PTT to settle accounts for traffic to the United States, or an increase in the rate paid by U.S. carriers to settle accounts for delivery of traffic to the PTT. *See Reconsideration Order, supra* note 2 at 1118.

[9] AT&T Petition at 7.

[10] *See* Letter from Mary E. Deal, Attorney, AT&T, to Donna R. Searcy, Secretary, FCC (June 23, 1989).

[11] *Id.* at 2.

[12] *Id.*

[13] *Id.* at 3.

[14] *See* MCI Telecommunications Corp., Transmittal No. 543, MCI Reply (June 30, 1989).

[15] *See also* Letter from Donald J. Elardo, Associate Regulatory Counsel, MCI to George Li, Chief, International Facilities Division, Common Carrier Bureau, FCC (July 7, 1989).

[16] MCI asserted that "at a minimum this is an admission that USADirect differs from ILD service and can carry a higher accounting rate." In addition, MCI added its belief that, at least as to one of these two foreign carriers, the temporary transitional accounting rate is permanent. MCI Reply at 7.

[17] *See* letter from Mary E. Deal, Attorney, AT&T to Donna R. Searcy, Secretary, FCC (July 25, 1989).

[18] AT&T also noted that for two and one-half years AT&T has settled with Telefonica for the USADirect option at existing IMTS accounting rates.

[19] *See MCI Tariff Order, supra* note 5. Earlier, the Chief, Tariff Division had directed MCI to defer those provisions relating to the introduction of Spain as a new service point from which customers can make MCI CALL USA calls. *See, e.g.*, Letter from John Cimko, Chief, Tariff Division, Common Carrier Bureau, FCC to Evie Wolfson, Manager, Tariffs and Rates, MCI (June 29, 1989).

[20] Specifically, the Order stated that the Bureau could not agree with MCI that its CALL USA service is different from AT&T's USADirect service simply because MCI's service is available from any telephone in Spain. Moreover, the Bureau stated that it did not consider Telefonica's view that USADirect is a "transitory" or "experimental" service to be the appropriate basis for a Commission assessment of the nature of the services for the purposes of the ISP. *See MCI Tariff Order, supra* note 5 at para. 15.

[21] *See* Letter from George Li, Chief, International Facilities Division, Common Carrier Bureau, FCC, to Jodi Cooper, Regulatory Attorney, MCI (June 27, 1989).

[22] *See supra* note 1.

[23] AT&T adds that the accounting rates applicable to the USADirect option will also apply to the "Spain-Direct" option which will afford callers in the U.S. dial access to Telefonica operators in Spain. Moreover, AT&T notes that, under the Agreement, these accounting rates will be reduced if there is a reduction in the accounting rates for U.S./Spain basic ILD service.

[24] AT&T notes that the applicability of any per-minute premium in the second and/or third years is premised on estimates (based on growth rates over the past five years) of the correspondent's total net switched voice revenues for Spain-originated traffic with all U.S. carriers without the dial-access USADirect option. It adds that if the correspondent's actual net revenues in the first year are less than the agreed-upon estimated forecast, a per-minute premium, equal to the shortfall in the first year divided by the minutes of actual use of the USADirect option in the first year will be applied to USADirect traffic in year two. If there is a revenue shortfall in the second year, a similar provision, using the second year's shortfall and the second year's minutes of actual use of the USADirect option will be applied in year three. The level of the per-minute premium in either year may not, however, exceed 50 percent of .35 SDR.

[25] AT&T adds that the one-time payment is equal to about 50 percent of .35 SDRs times the number of actual minutes of use of the USADirect option from November, 1986 through August 31, 1989.

[26] The accounting rate levels for International 800 service are subject to review one year after the service is operational.

[27] Letter from John M. Scorce, Senior Regulatory Counsel, MCI, to Donna R. Searcy, Secretary, FCC (August 21, 1989).

[28] *See* Letter from Mary E. Deal, Attorney, AT&T, to Donna R. Searcy, Secretary, FCC (August 23, 1989). On the same day, the Commission notified AT&T that it must await formal action by the Commission before it could legally implement the new accounting rate for USADirect service from Spain. *See* Letter from George Li, Chief, International Facilities Division, Common Carrier Bureau, FCC, to David J. Ritchie, General Attorney, AT&T (August 23, 1989).

[29] Moreover, AT&T notes that the same arrangement has been available to AT&T ever since AT&T began discussing dial access for its USADirect option with Spain. Thus, AT&T contends that there is no validity to MCI's claim that AT&T deliberately delayed the MCI tariff's effective date to negotiate an agreement identical to MCI's.

[30] *See supra* note 4.

[31] MCI's Call-Spain service works in the same manner as AT&T's "Spain-Direct" service. *See supra* note 23.

[32] Mackay Radio and Telegraph Company, Inc., 2 FCC 592 (1936); *aff'd by the Commission en banc*, 4 FCC 150 (1937); *aff'd sub nom.* Mackay Radio and Telegraph Co. v. F.C.C., 97 F.2d 641 (1938).

In *Mackay Radio*, the Commission denied the Mackay Radio and Telegraph Company authorization under Section 214 of the Communications Act for a radio circuit to Oslo, Norway because it objected to the settlement terms in Mackay's proposed operating agreement with the Norwegian PTT. The Commission found the agreement objectionable because it would have permitted the Norwegian PTT to play two U.S. entities against each other, to manipulate traffic flows, and to retain a greater percentage of the accounting rate at the expense of a U.S. carrier. The Commission stated that this attempt by the PTT to maximize its revenues by whipsawing the U.S. carriers was the normal consequence of the international market situation, and that the protection of United States non-monopolist entities therefore rests with the Commission, falling within its general powers mandate to protect the public interest, convenience, and necessity.

Indeed, the Commission stated:

> To expect the Telegraph Administration to play the competing companies against each other is simply to expect that the administration will be headed by good businessmen, loyal to their national interests. To rely upon companies which are bitter competitors not to make concessions to the administration which controls all outgoing radio-telegraph traffic is to provide an exceedingly tenuous basis upon which to rest the public interest.

2 FCC at 599.

[33] *See, e.g.*, Uniform Settlement Rates on Parallel International Communications Routes, 84 FCC 2d 121 (1980)(*Uniform Settlement Rates)*.

[34] *See* Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes, Notice of Proposed Rule Making, CC Docket No. 85-204, 50 Fed. Reg. 28418 (1985).

[35] In 1987, the Commission reaffirmed its uniform settlements policy, relabelling it the international settlements policy (ISP). On reconsideration of the *Report and Order*, the Commission stated:

> Our policy might also be termed an anti-whipsawing policy, because uniformity is not an end in itself. Our objectives are to ensure that U.S. entities are treated fairly and that American consumers receive the benefits that result from the provision of international services on a competitive basis. Departures from uniformity are permissible if the particular departure does not conflict with these objectives. We have accordingly decided to use the term "international settlements policy" in this Order.

Reconsideration Order, *supra* note 2, at 1118.

[36] In the *Report and Order*, the Commission established a procedure for Commission review of each and every proposed modification of the terms, rates, or toll divisions of operating agreements where more than one carrier or service provider offers a particular service to a particular foreign jurisdiction. *Report and Order* at para. 48. On reconsideration, the Commission adopted streamlined procedures for switched voice services that permit carriers to establish a non-uniform accounting rate, absent a Bureau finding to the contrary, to become effective within 21 days. *Reconsideration Order* at 1122.

[37] *See Uniform Settlement Rates*, *supra* note 33 at 127.

[38] *See* Regulatory Policies and International Telecommunications, Report and Order and Supplemental Notice of Inquiry, CC Docket 86-494, 53 Fed. Reg. 12546, at para. 81 (1988), *recon. granted on other grounds* 4 FCC Rcd 323 (1989).

[39] Instead, foreign correspondents' shares of IMTS revenues account for an increasing proportion of the gross revenues generated from calls originating in the United States. Indeed, in the case of service to Spain in 1988, for example, settlements accounted for 89.9% of the $47.4 million for IMTS service originating in the United States.

[40] The Commission also noted large and growing settlements outflows to several countries, including Japan and the Federal Republic of Germany. The Commission noted, for example, that the net settlement outflow from the United States to Japan increased from $2.9 million in 1975 to $62.4 million in 1986. Similarly, the net settlement outflow from the United States to the Federal Republic of Germany increased from $10.1 million to $87.6 million over the same period. *Id.* at n. 85.

[41] *See* International Accounting Rates and the Balance of Payments Deficit in Telecommunications Services, Report of the Common Carrier Bureau to the Federal Communications Commission (December 12, 1988)(hereinafter *Bureau Report)*.

[42] The *Bureau Report* observed that the United States is experiencing a large balance of payments deficit for international telecommunications (the difference between the amounts that U.S carriers owe to foreign partners (for service that originates in the United States) and the amount that foreign carriers owe U.S. carriers (for service that originates in foreign countries)) and that this deficit has grown at an annual rate of more than 20 percent per year. *Id.* at 4. Indeed, the latest data indicate that the total U.S. balance of payments deficit in 1988 surpassed $2.0 billion. *See* Kenneth Stanley, "Trends in the International Communications Industry, 1975-1989," Industry Analysis Division, Common Carrier Bureau, FCC (December 1989).

[43] The *Bureau Report* indicates that it appears that approximately half of the balance of payments deficit represents compensation for costs incurred and half represents a subsidy to foreign administrations. *Bureau Report* at 45.

[44] The Commission observed, for example, that the West German government had promised to reduce its collection rate to the United States by approximately 15%. *See* Dr. Christian Schwarz-Schilling, Minister of Posts and Telecommunications, The Federal Republic of Germany, "Competition - The Key to the Telecommunications Market in the Federal Republic of Germany," Washington, D.C. (June 3, 1988). The Commission also observed that the Japanese Ministry of Posts and Telecommunications had authorized a Kokusai Denshin Denwa Co., Ltd., (KDD) request to reduce the accounting rate between the United States and Japan from $2.35 to 1.34 SDRs ($1.85) and to reduce Japanese IMTS collection rates by 20%. *See, e.g.*, Letter from Minoru Shioya, Director General, Telecommunications Bureau, Ministry of Posts and Telecommunications to Gerald Brock, Chief, Common Carrier Bureau, FCC (August 3, 1988). *See* Regulatory Policies and International Telecommunications, *Order on Reconsideration*, 4 FCC Rcd 323, 331 (1989). Recently, KDD announced a further reduction of IMTS rates to the U.S. of 18%. *See* KDD Worldlink News, November 1, 1989.

[45] In this context, we note that we specifically concluded in the *MCI Tariff Order* that MCI had failed to demonstrate that the CALL USA service is fundamentally different from either AT&T's USADirect service or other international message telephone services to Spain and, as a result, MCI's request was subject to the notification requirements of the ISP. *See MCI Tariff Order*, *supra* note 5 at para. 15. We also note, however, that the Commission has not made any distinction between different types of voice services for the purpose of analysis under the ISP. To the contrary, the Commission has made clear that the ISP is "designed to deal with a market situation and not a particular technology or service type." *See Report and Order*, *supra* note 2 at para. 35. Indeed, the Commission emphasized that the focus of the ISP is on the assurance of bargaining parity and fairness, and the protection of the U.S. public interest; not on a very limited variation of a more generic service. *Id.* at para. 34.

[46] Indeed, both AT&T and MCI tariffs these services as IMTS. *See* AT&T Communications, Tariff F.C.C. No. 1; MCI Communications Corp., Tariff F.C.C. No.1.

[47] In this context, we note that AT&T has stated that both USADirect and Call USA are functionally equivalent and satisfy "the need of U.S. consumers in Spain to make 'plain old' voice calls to the U.S." *See* July 25, 1989, Letter *supra* note 18. Furthermore, we believe that it is significant that AT&T's USADirect service with almost all countries, including Spain, is offered at the ILD accounting rates that currently apply to service with these countries. Indeed, AT&T stated that when it was initially authorized to establish USADirect service with Spain in November, 1986, both AT&T and Telefonica agreed that "the existing accounting rates (for USADirect service) are the ILD accounting rates." *See* June 23, 1989, AT&T Informal Protest, *supra* note 10; *see also* AT&T Tariff FCC No. 1.

[48] As noted above, the Commission has set forth factors, such as the possibility of lower collection rates, improved services, and increased competition, for evaluating waiver requests. *See, e.g., Report and Order* and *Reconsideration Order*, *supra* note 2; *see also Uniform Settlement Rates*, *supra* note 33.

[49] *See* Carolina Broadcasting Co., 18 FCC 2d 482, 483 (1969); Sudbrink Broadcasting, Inc. of Florida v. F.C.C., 509 F. 2d 418, 422 (D.C. Cir. 1974).

[50] At present, a customer placing a collect call from Spain must pay higher rates than those rates proposed for USADirect service. The lower, operator station rates that are available with USADirect service are not available to AT&T's customers on collect calls from Spain. Thus, if AT&T, for example, were to provide customers with the option of placing a collect call from Spain at the operator station rate, telephone customers would have the opportunity to call the United States at the same rate as under the USADirect service. Moreover, AT&T would not be required to make any additional payment to Telefonica.

[51] We have estimated, for example, that AT&T's fully distributed cost per minute of service to France and Italy was about 40 cents in 1985 and that, as a result, a reasonable estimate of total costs would be approximately 80 cents per minute in 1985. *See Bureau Report*, *supra* note 41 at 37. Under this assessment, which neither AT&T nor MCI address, the current U.S.-Spain IMTS accounting rates would be roughly two to two and one-half times the estimated cost of providing IMTS service to and from Spain (1.6 SDRs = $1.97 for peak period calls and 1.2 SDRs = $1.48 for off-peak period calls).

[52] In 1988, for example, we note that a customer was charged $9.57 by AT&T for an eight minute, direct-dial, telephone call from the United States to Spain. On the other hand, a customer was charged $19.25 by Telefonica for an eight minute, direct-dial, telephone call from Spain to the United States. *See* Kenneth Stanley, "The Balance of Payments Deficit in International Telecommunications Services," Industry Analysis Division, Common Carrier Bureau, FCC (December 12, 1988).

[53] Under Telefonica's proposed arrangement a caller using USADirect or CALL USA would use a U.S. operator and thus any operator-associated costs incurred would fall on AT&T or MCI - not Telefonica. Indeed, AT&T raised this issue in the pleadings it submitted in the *MCI Tariff Order*, *see supra* note 13 and accompanying text.

[54] In 1986, Telefonica expressed concern, for example, that if the called party refuses to accept a collect call, no charge is payable. Telefonica noted that in the "Spanish international service, while the cancellation rate in the station-to-station service is 26%, the rate for calls with special facilities (personal and collect calls) is above 40% on average." *See* CTNE, Management Charge for Collect Calls, Delayed Contribution D.86, CCITT Study Group III (6-17 October 1986).

[55] In this context, we note that U.S. settlement payments for IMTS service with Spain increased from $7.9 million in 1980 to $24.2 million in 1988. Moreover, we note that U.S. settlement payments to the twelve European Community countries increased from $97.8 million in 1980, to $383 million in 1988.

[56] Moreover, we note that the AT&T and MCI proposal for a .35 SDR surcharge for USADirect and CALL USA service with Spain is inconsistent with recent work in Study Group III Working Party III/4 which recommended that the accounting rate for country direct service be that of international automatic telephone service (IMTS). *See* Temporary Document No. 4013, Working Party III/4, Geneva, 19-21 February 1990. This recommendation was supported by the United States.

[57] We note, however, that in the interim, callers from Spain will continue to have two other options for completing calls to the United States. First, callers can continue to call direct from Spain. Second, callers can continue to call collect to the United States.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

YAVAPAI TELEPHONE EXCHANGE	File Nos. IC-89-05127 IC-89-05820, IC-89-05827 IC-89-05967

Apparent Liability for Forfeiture

NOTICE OF FORFEITURE

Adopted: July 12, 1990; **Released: July 19, 1990**

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On March 13, 1990, we released a *Notice of Apparent Liability*, 5 FCC Rcd 1353 (1990) (*NAL*) in the above-captioned proceeding. We found Yavapai Telephone Exchange (YTE) apparently liable for forfeiture in the amount of $9,000 for its willful and repeated violations of Section 1.717 of the Commission's Rules, 47 C.F.R. § 1.717[1] and Section 416(c)[2] of the Communications Act (Act) by failing to respond to the Commission's orders, and allowed 30 days from the release date of the NAL for YTE to respond, either by paying the forfeiture amount or explaining why the forfeiture should be reduced or not imposed at all. We also ordered it to file written investigation reports for each of the informal complaints cited in the NAL.

2. YTE is an authorized resale common carrier located in Prescott, Arizona. Informal complaints have been filed against YTE alleging, among other things, that the 800 Service lines that complainants were leasing from YTE were disconnected without notice. Complainants further alleged that, because of a billing dispute between MCI Telecommunications Corporation (MCI) and YTE, MCI's 800 Service to YTE was suspended by MCI, causing complainants to lose business. In each complaint case, the Informal Complaints Branch (Branch) of the Common Carrier Bureau sent Notices of Informal Complaint (Notices) on behalf of the complainants directing YTE and MCI to investigate the issues raised in the complaints and to report the results of their investigations to the Branch within thirty days of the dates of the Notices. MCI responded in full to each complaint but YTE failed to respond to any of the notices required by Section 1.717 of the Rules.

3. In four instances YTE failed to respond to our inquiries in the prescribed time period. (*See* Appendix A for a list of complainants.) Therefore, the Branch also sent letters to YTE via certified mail reciting YTE's obligation to respond to the Commission's Notices. The certified letters allowed an additional fifteen days to respond. When YTE again failed to respond, the Chief of the Enforcement Division, Common Carrier Bureau, acting under delegated authority, issued a Notice of Apparent Liability for Forfeiture, pursuant to Section 503(b) of the Act, for willful or repeated failure to comply with Section 1.717 of the Rules. The forfeiture amount was set at $9,000, based upon a $1,000 forfeiture for YTE's failure to respond to each of the four Notices, and a $1,000 forfeiture for the discrete offenses of not responding to five certified letters forwarded to YTE and received by its representatives. The *NAL* afforded YTE until April 12, 1990, either to pay the forfeiture or to file a response showing why a forfeiture should be reduced or not imposed. YTE failed to provide any response whatsoever to the *NAL*.

4. Accordingly, IT IS ORDERED, pursuant to authority delegated in Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, that Yavapai Telephone Exchange FORFEIT to the United States Government the sum of nine thousand dollars ($9,000) for violations of Section 1.717 of the Commission's Rules and Section 416(c) of the Act. Payment may be made in the manner provided for in Section 1.80(h) of our rules within 30 days from the release of this Order. [3] If the forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.

5. IT IS FURTHER ORDERED that a copy of this Notice of Forfeiture shall be sent by certified mail, return receipt requested, to Yavapai Telephone Exchange.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

APPENDIX A

(a) Informal complaint filed by *Jim Hearne of Arizona Tours in Sedona, Arizona* (File No. IC-89-05127). Notice of Informal Complaint dated June 29, 1989; YTE response due July 29, 1989. Certified letter dated October 23, 1989; YTE response due date November 7, 1989.

(b) Informal complaint filed by *Joyce Bunch, CTC of The Travel Connection in Prescott, Arizona* (File No. IC-89-05820). Notice of Informal Complaint dated July 5, 1989; YTE response due date August 4, 1989. Certified letter dated November 16, 1989; YTE due date December 1, 1989.

(c) Informal complaint filed by *Arda S. Rutherford of Lucky Seven Transfer and Storage, Inc. in Prescott Valley, Arizona* (File No. IC-89-05827). Notice of Informal Complaint dated July 5, 1989; YTE response due date August 4, 1989. Certified letters to YTE dated November 16, and November 30, 1989; YTE responses due December 1 and December 16, 1989, respectively.

(d) Informal Complaint filed by *Nanci Healey, Owner of Time Expeditions in Sedona, Arizona* (File No. IC-89-05967). Notice of Informal Complaint dated July 25, 1989; YTE's response due August 24, 1989. Certified letter dated October 11, 1989; YTE response due October 26, 1989.

FOOTNOTES

[1] Section 1.717 provides:

> The Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or of its refusal or inability to do so. Where there are clear indications from the carrier's report or from other communications with the parties that the complaint has been satisfied, the Commission may, in its discretion, consider a complaint proceeding to be closed, without response to the complainant. In all other cases, the Commission will contact the complainant regarding its review and disposition of the matters raised. If the complainant is not satisfied by the carrier's response and the Commission's disposition, it may file a formal complaint in accordance with §1.721 [of the rules].

47 C.F.R. § 1.717.

[2] Section 416(c) requires compliance with Commission orders so long as they remain in effect.

[3] Such a forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. The check or money order should be mailed to the Forfeiture Unit, Financial Services Branch, F.C.C., Box 19209, Washington, D.C. 20554, or delivered to the Forfeiture Unit, Financial Services Branch, Room 452, 1919 M Street, N.W., Washington, D.C 20036.

Before the
Federal Communications Commission
Washington, D.C. 20554

In re

Request for Declaratory Ruling

By

Paramount Communications, Inc.

STAFF RULING

Adopted: July 12, 1990; Released: July 19, 1990

By the Chief, Fairness/Political Programming Branch:

1. The Commission has before it a request for declaratory ruling, filed by Paramount Communications ("Paramount")[1], that its program, "Hard Copy," be treated as exempt from Section 315 of the Communications Act as a "bona fide newscast." Alternatively, Paramount asks that, if deemed more appropriate, "Hard Copy" be treated as a "bona fide news program" comprised of several exempt categories -- bona fide newscasts, bona fide news interviews, bona fide documentaries, and on-the-spot coverage of bona fide news events. Based on the information before us, it appears that "Hard Copy" satisfies Congress' intent in enacting the bona fide newscast exemption. Therefore, we need not consider Paramount's alternative request.

2. Paramount states that "Hard Copy" is produced as a syndicated, half-hour news program, which has been regularly scheduled, Monday-Friday, since September 18, 1989. "Hard Copy covers news events and topical issues in a standard newscast format, with anchors, reporters, and heavy reliance on video tape." Paramount explains that, as deemed necessary, "[i]ndividual stories are cast in news report, interview, documentary, on-the-spot news format, or any combination of these" techniques. Paramount states that stories are selected solely on the basis of newsworthiness and public significance, and not to advance any candidacy.

DISCUSSION

3. In 1959, Congress amended the Communications Act to exempt, from the equal opportunities provision of Section 315, appearances by legally qualified candidates during the following four categories of bona fide news programming:

(1) bona fide newscast,

(2) bona fide news interview,

(3) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto).

47 U.S.C. Section 315(a). Congress removed the inhibiting effect of the equal opportunities obligation upon bona fide news programming to encourage increased news coverage of political campaign activity. Rather than define precisely what it meant by "news," Congress chose to leave the task of interpreting the scope of each exemption to the Commission. *See* 105 Cong. Rec. 16227 (1959)(Rep. Celler); 105 Cong. Rec. 14455 (1959)(Sen. Pastore). Although Congress did provide some indication of what it envisioned structurally for some of the exemptions (*e.g.* bona fide news interviews must be regularly scheduled), it did not specify any requisite characteristics for the bona fide newscast exemption. Congress did articulate that the common characteristic of all of the news exemptions is "bona fide news value." Conf. Rep. No. 1069, 86th Cong., 1st Sess. at 4 (1959); 105 Cong. Rec. 14442 (Sen. Pastore). Indeed, Congress qualified each exemption with the term "bona fide," which the legislative history demonstrates was intended to emphasize that bona fide news programming be genuinely newsworthy and not designed by the broadcaster for the purpose of advancing or harming any particular candidacies. *See* 105 Cong. Rec. 17782 (1959).

4. The Commission has ruled on several occasions that specific programs could be treated as bona fide newscasts. *Oliver Productions*, 4 FCC Rcd 5953 (1989)(segments of "The John McLaughlin Group"), *appeal pending sub nom. Telecommunications Research & Action Center v. FCC*, No. 89-1616 (D.C. Cir., filed Oct 2, 1989); *Paramount Pictures Corp.*, 64 RR 2d 600 (M.M. Bur. 1988)("Entertainment Tonight" and "Entertainment This Week"); *Rev. Donald L. Lanier*, 37 FCC 2d 952 (B/c Bur. 1972)("The Church Today"). In ruling that "Entertainment Tonight" and "Entertainment This Week" were bona fide newscasts, the Commission, through its Mass Media Bureau, stated that, in terms of format, the principal consideration should be "whether the program reports news of some area of current events . . . in a manner similar to more traditional newscasts." 64 RR 2d at 601. The Commission has thus specifically declined to evaluate the relative quality or significance of the topics and stories selected for newscast coverage, appropriately relying instead on good faith news judgment. Just as in the specific programs previously considered exempt under the newscast exemption, "Hard Copy" appears to follow a traditional newscast format. The utilization of interviews, on-the-spot coverage, and documentary footage in the context of some stories presented by "Hard Copy," is not a basis for denying a newscast exemption since these various approaches to news reporting are typical of the more traditional newscast formats. Furthermore, we have no basis for believing that the stories covered by "Hard Copy" are selected for any reason other than their genuine newsworthiness.

5. Accordingly, on the basis of the information before the Commission, it appears that "Hard Copy," in the format described by Paramount in its request, should be accorded the bona fide newscast exemption. We believe this conclusion is fully consistent with the statutory objective of the Section 315 exemptions -- to enhance news coverage of the political arena.

6. Staff action is taken here pursuant to delegated authority.

FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief
Fairness/Political Programming Branch
Enforcement Division
Mass Media Bureau

FOOTNOTE

[1] According to the request, Paramount, through its subsidiary Newtel, Inc., owns and operates six television stations: WDCA-TV, Washington, D.C.; WLFL-TV, Raleigh, NC; WTXF-TV, Philadelphia, PA; KTXH-TV, Houston, TX; KTXA-TV, Arlington, TX; and KRRT, Kerrville, TX. Paramount also owns Paramount Pictures Corporation, which, through its domestic television division, produces and distributes first-run syndicated programs.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

GTE SOUTHWEST AAD 8-1902

Request to Allow Amortization
of Debt Refinancing Expenses and
Unamortized Discounts and Premiums
Associated with Reacquired Debt

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 1990; Released: July 19, 1990

By the Chief, Common Carrier Bureau:

1. By a pleading filed June 7, 1990, GTE Southwest Incorporated (GTE) requests deferral of certain accounting requirements contained in the *Amortization Denial Order* [1] pending Commission review of that decision.[2] We conclude that GTE has failed to make the requisite showing to justify interim relief, and therefore deny its request.

2. In the *Amortization Denial Order*, the Common Carrier Bureau (Bureau) denied GTE's request for permission, under Part 31 and Part 32 of the Commission's rules, to amortize debt refinancing expenses, call premiums, and the unamortized discounts and expenses associated with bond and preferred stock redemptions. The Bureau directed GTE to follow the accounting treatment prescribed in Part 32 of the rules and ordered GTE to make certain entries in its accounts. In addition, the Bureau found GTE apparently liable for a forfeiture of $9,000 for its failure to follow the Commission's rules when accounting for these redemptions.

3. In its Request for Deferral, GTE states that it seeks to maintain the *status quo* while the Commission considers GTE's Application for Review of the Bureau's *Amortization Denial Order*. GTE's specific concern is that the Bureau has ordered the company to make certain accounting entries, but that those entries would have to be reversed should the Commission act favorably on its Application for Review. GTE states that it would be far preferable to defer action and to maintain the *status quo* until the Commission reviews the Bureau's decision. [3]

4. Although GTE styles its pleading as a Request for Deferral, the carrier in practical effect seeks a stay of the Bureau's decision. Under governing legal standards, we consider four factors in determining whether such interim relief is warranted: (1) Has the petitioner made a strong showing that it is likely to prevail on the merits of its appeal? (2) Has the petitioner shown that without the requested relief, it will be irreparably injured? (3) Would issuance of a stay substantially harm other parties interested in the proceedings? (4) What action is in the public interest?[4]

5. The four-pronged standard established in *Virginia Petroleum Jobbers* and refined in *Holiday Tours* requires that each of the prerequisites listed above be met before a stay is warranted. Without expressing any view as to GTE's showing regarding the other three prongs of the *Virginia Petroleum Jobbers/Holiday Tours* test, we find that GTE has failed to show that it would be irreparably injured by complying with the accounting requirements of the *Amortization Denial Order*.[5] GTE merely states that it would be "preferable" to maintain the *status quo* pending Commission review of the Bureau's order, citing the possibility that it might have to reverse accounting entries should the Commission ultimately grant its Application for Review. The possibility of future inconvenience, however, does not constitute irreparable harm.[6] GTE has failed to allege, much less demonstrate, that absent a stay it will suffer irreparable injury. Since GTE has failed to make the requisite showing of irreparable harm, we deny its request for interim relief.

6. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291 (1989), that the Request for Deferral filed by GTE Southwest Incorporated IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] GTE Southwest, Request to Allow Amortization of Debt Refinancing Expenses and Unamortized Discounts and Premiums Associated with Reacquired Debt, Memorandum Opinion and Order and Notice of Apparent Liability, 5 FCC Rcd 2897 (Com.Car.Bur. 1990) (*Amortization Denial Order*).

[2] Concurrently with its Request for Deferral, GTE has filed an Application for Review of the *Amortization Denial Order*.

[3] GTE Request for Deferral at 3.

[4] Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958) (*Virginia Petroleum Jobbers*); Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) (*Holiday Tours*).

[5] *See* Motions for Stay of Annual 1988 Access Tariff Filings, Order, 4 FCC Rcd 1394, para. 4 (Com.Car.Bur. 1989).

[6] *See Virginia Petroleum Jobbers*, 259 F.2d at 925.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-313

In the Matter of

Policies and Rules Concerning Operator Service Providers — RM-6767

NOTICE OF PROPOSED RULE MAKING

Adopted: June 14, 1990; Released: July 17, 1990

By the Commission:

I. INTRODUCTION

1. The Communications Act of 1934, as amended, ("the Act") mandates that this Commission regulate interstate telecommunications services "so as to make available . . . to all the people of the United States . . . efficient, nationwide . . . communication service with adequate facilities at reasonable charges."[1] Recent technological and marketplace evolution in the provision of operator services,[2] along with widespread consumer dissatisfaction over the rates and practices of many operator service providers, [3] now oblige us to reexamine many of our requirements and policies as they pertain to this rapidly changing segment of the telecommunications industry.[4] Specifically, we propose to adopt new rules and policies that we tentatively conclude are required to promote the objectives of the Communications Act. We therefore initiate this Rule Making proceeding and begin with a discussion of the development of the modern operator services industry.

II. BACKGROUND

A. The Development of the Operator Services Industry

2. In the aftermath of the AT&T divestiture,[5] as regulation of the telecommunications industry changed, the operator services industry evolved to include companies offering alternatives to the traditional Bell System-provided operator services. These companies, sometimes referred to as alternative operator service providers, typically lease lines from telephone carriers and combine these transport elements with their own operator services. Then, like the more traditional OSPs, they enter into contracts to provide operator services to "call aggregators."[6] The telephones for which an OSP provides service are said to be "presubscribed" to that OSP. Barring some affirmative action by the caller, such as dialing a 10XXX or a 950 or 800 number, a call aggregator's customers are automatically connected to the presubscribed OSP when they make certain operator-assisted calls using the aggregator's telephone. Most companies, other than the local exchange companies and AT&T, are classified as nondominant carriers under our *Competitive Carrier* decisions.[7]

B. Related Proceedings

1. The TRAC proceeding

3. In July 1988, two consumer advocacy groups, the Telecommunications Research and Action Center ("TRAC") and Consumer Action, filed a formal complaint against five AOS companies, alleging that under *Competitive Carrier* the defendants were operating as dominant carriers and should be subject to the full panoply of Title II regulation, including tariff filing and certification requirements. The complainants contended that the defendants possessed market power because of the purported control they, along with their call aggregators, exercise over what the complainants characterized as "bottleneck" facilities. The complainants further alleged that this market power permitted the defendants to charge excessive rates and engage in practices that effectively deprive "captive" consumers on the aggregators' premises of information and competitive options. The complainants urged the Bureau to reclassify the defendant companies as dominant carriers, to find their rates and practices to be unjust, unreasonable, and contrary to the public interest, and to revoke their operating authority.

4. In a Memorandum Opinion and Order released February 27, 1989,[8] the Bureau granted the complaint in part, finding a number of the defendants' practices involving consumer disclosure, call blocking, and call splashing to be unjust and unreasonable in violation of Section 201(b) of the Act.[9] It ordered several specific forms of relief designed to eliminate the unlawful practices.

5. First, the Bureau ordered the defendant companies to provide consumer information to their customers in the form of tent cards, phone stickers, or some other form of printed documentation that could be placed on, or in close proximity to, all presubscribed phones.[10] These materials were required to set forth the company's identity (name, address, and a customer service number for receipt of further information), as well as information advising users that the company's rates would be quoted upon request. The Bureau said that new contracts between OSPs and call aggregators must contain provisions requiring aggregators to display these materials on, or in close proximity to, all presubscribed telephones. In addition, the defendants were ordered to amend existing contracts with call aggregators to reflect this requirement.[11]

6. Second, the Bureau found it to be an unlawful practice for an OSP not to identify itself audibly before a call is connected. This identification process is known as "call branding." In addition, the Bureau directed the defendant AOS companies to provide a sufficient delay period after the branding to permit a caller to either hang up or advise the operator to transfer the call to the caller's preferred carrier. The Bureau ordered these procedures to be implemented by the defendants immediately upon the effective date of the order.[12]

7. Third, the Bureau determined call blocking[13] to be an unlawful practice and ordered the defendants to discontinue the practice immediately.[14] The Bureau also required the defendants to amend existing contracts with call aggregators to prohibit blocking by the aggregators.[15]

8. Finally, the Bureau determined that the problem of call splashing[16] reflects the technological characteristics of the network and that a solution could best be obtained through the industrywide cooperation of operator service providers, including AT&T and the Bell Operating Companies. Because of concerns that splashing might have an adverse economic impact on consumers, the Bureau required the defendant AOS companies to bring the matter before the Carrier Liaison Committee of the Exchange Carrier Standards Association and to report back to the Bureau. The defendants were required, however, to eliminate immediately any call splashing that was within the technical capability of their existing networks.[17]

9. While the *TRAC Order* was specifically issued against the five defendants, the Bureau's reasoning made it clear that such practices would be unlawful if engaged in by any OSP. Therefore, the *TRAC Order* requirements would apply to any participant in the operator services industry, including, for example, other AOS companies and AT&T.[18]

2. The NARUC Rule Making petition

10. On April 17, 1989, shortly after the issuance of the *TRAC Order*, the National Association of Regulatory Utility Commissioners ("NARUC") filed a petition for Rule Making[19] to address a number of issues regarding the practices, policies, and appropriate regulatory treatment of OSPs.[20] Specifically, NARUC urges the Commission to adopt, *inter alia*, minimum regulatory guidelines applicable to operator service companies in the following areas: (1) rate levels, (2) customer notification, (3) billing practices, (4) quality of service, (5) complaint resolution procedures, and (6) customer choice.[21] NARUC, while voicing general support for the measures taken by the Bureau to resolve the *TRAC* complaint, argues that the Commission should broaden the scope of its inquiry into OSP practices beyond those encompassed by the *TRAC* complaint proceeding.[22] NARUC maintains that certain issues, such as the Commission's definition of firms with market power, cannot be considered adequately in other than a Rule Making proceeding.[23] In a Rule Making context, NARUC argues, the Commission would be in a position to consider detailed evidence and arguments on operator service issues submitted by a wide range of interested parties who may not have participated in the *TRAC* proceeding.[24]

11. On May 23, 1989, the Bureau issued a Public Notice inviting comments on NARUC's petition.[25] A number of commenters responded favorably to NARUC's petition and encouraged the Commission to institute a proceeding to adopt additional regulatory restraints on OSPs.[26] Other commenters, including the *TRAC* proceeding defendants and other interested parties, opposed the petition as unnecessary or inappropriate in light of the Bureau's *TRAC Order* and other Commission proceedings.[27] We will grant NARUC's petition insofar as it seeks a broader Commission inquiry into the practices of operator service providers, and, accordingly, we address in this proceeding many of the issues raised by NARUC and the comments filed on its Rule Making petition. We are not persuaded, however, that we should consider modifying our rules and policies regarding the classification of AOS providers as non-dominant carriers. While the concerns expressed by NARUC and others over the rates charged by many OSPs raise important issues, we tentatively conclude that the rules and policies proposed in this Notice, which will enable consumers to make informed choices and to reach their carriers of choice, will constitute a sufficient check on the rates and practices of service providers and will eliminate those that are harmful to consumers. In this regard, we also tentatively conclude that the rules proposed herein will reduce or eliminate any market power that OSPs arguably may have. We therefore tentatively reject the NARUC proposal to the extent that it requests that we reexamine our *Competitive Carrier* policies and consider the adoption of specific rules to regulate the rate levels of operator service providers.

C. Legislative Proposals

12. Congress, too, is concerned over problems related to operator services and has expressed this concern in the form of specific legislative proposals aimed at curbing certain practices of OSPs as well as preserving the customers' right to just and reasonable rates. Currently, there are three bills pending: one in the House, H.R. 971, 101st Cong., 1st Sess. (1989), and two in the Senate, S. 1643, 101st Cong., 1st Sess. (1989), and S. 1660, 101st Cong., 1st Sess. (1989). During hearings on the proposed legislation before the Senate Subcommittee on Communications in February 1990, the Chief of the Common Carrier Bureau expressed the Commission's agreement with the overall goal of the legislation and informed the Subcommittee of our intention to institute this Rule Making proceeding to address continuing issues and concerns. Several of the legislative provisions, such as those concerning call blocking and customer information and notification practices, are similar in all pertinent respects to the remedies adopted in the *TRAC Order* and are reflected in the rules we propose herein. Other provisions, such as those concerning equipment and software modifications, were not contemplated in the *TRAC* proceeding; nevertheless, these too are encompassed by this Notice.

D. Continuing Concerns

13. In the wake of the *TRAC Order*, the Commission has attempted to address problems with operator services through consumer education and awareness efforts and by maintaining a dialogue with industry participants. While the number of complaints received by the Commission has diminished by half, significant problems persist.[28] In light of this situation, we now propose the following rules and policies.

III. DISCUSSION

A. Proposed Rules [29]

1. Customer Information

14. We first propose rules that pertain to a subject that is vital to the operation of an open and competitive operator services marketplace: customer information and notification.[30] In the *TRAC Order*, the Bureau noted that a "gap in [customer] information thwarts effective [customer] choice and creates the opportunity for any [operator service] company to charge excessive rates."[31] We view this Rule Making proceeding as an opportunity to ensure application of the *TRAC Order* remedies throughout the operator services industry, by AOS providers and "traditional" OSPs alike. Our proposed Section 64.703

would generally implement several customer information requirements that were applied to the defendants in the *TRAC* proceeding.

15. The initial parts of Section 64.703 prescribe customer information that must be provided by the operator service companies themselves. Section 64.703(a)(1) requires OSPs to engage in "call branding," which is the process by which an OSP audibly and distinctly identifies itself to every person who uses its operator services. This branding must be done before the customer incurs any charges from the OSP, and, under Section 64.703(a)(2), the OSP must allow sufficient time after the branding for the customer either to terminate the call without charge or to advise the operator to transfer the call to the customer's preferred carrier without charge. We emphasize that all calls must be branded, regardless of what devices are used to process the calls.[32] We also seek comment on whether we should require double branding, which is an identification both at the beginning of a call and again just before the call is connected.[33] Double branding would, by emphasizing the identity of the operator service company, more fully ensure that the customer has freely chosen to use that company's services.

16. Section 64.703(a)(3) requires OSPs to disclose, upon request by the customer, the rates or charges for the anticipated call, collection methods for those rates or charges, and the OSP's complaint resolution methods. This information is necessary both to allow the customer to make a free and knowledgeable choice among OSPs and to help avoid or resolve disputes over charges.

17. Call aggregators would also, under our proposed rules, play an important part in informing customers of their choices in the operator services marketplace. Pursuant to the proposed Section 64.703(b), the call aggregator would have to provide, for the customer's use, printed documentation that informs the customer of the OSP's identity, address, and toll-free customer service telephone number, and that contains a statement that the OSP's rates will be quoted upon request. This documentation must also inform customers that they have a right to use their carriers of choice and must contain instructions on how to contact those carriers. While we expect that most aggregators will choose to display this information either on tent cards near the telephones or on stickers or signs affixed to the telephones, we seek comment on whether the aggregators should have the option of giving the necessary printed documentation to the customer in person. A customer at a hotel or a patient at a hospital, for example, could be given this information while checking in. Although we see this alternative as a way for aggregators to ensure that each customer is properly notified, we would expect aggregators that choose this option to make certain that every customer is, in fact, aware that the written material being provided contains the information described above. As Section 64.703(c) indicates, we propose to place the responsibility for providing this on-site information jointly on the OSP, the aggregator, and the owner of the telephone, such as LECs that own pay telephones.[34] Joint responsibility would help ensure that the customer will be fully informed when choosing an operator service provider and would eliminate the possibility that one of these entities could, with impunity, thwart the efforts of the others.[35]

2. Call Blocking

18. Next, in proposed Section 64.704, we address the problem of call blocking, an unlawful practice that the Bureau has previously determined acts to "distort and impede the operation of a fully competitive operator services industry,"[36] a finding that we now affirm. Our goal in addressing this problem is to allow all customers access to their carriers of choice through alternative access methods. As we are doing elsewhere in this Notice, we seek comment on a variety of means to our stated end and will study the comments to determine which steps or combinations of steps will best achieve our goal. Subsections (b), (c), and (d) of this proposed rule prohibit blocking by OSPs, call aggregators, and pay telephone owners, and, under subsection (e), all applicable contracts or tariffs must be modified to delete any blocking requirements and to prohibit blocking explicitly. We also seek comment on whether and to what extent it would be appropriate to grant any limited waivers of this section's blocking prohibition. We currently contemplate that any exceptions to the blocking prohibition will likely be limited in scope and duration and focused on a physical problem faced in a specific location. We encourage interested parties to suggest criteria we might use in making a waiver determination.[37]

19. The *TRAC Order* defines call blocking as "the process of screening the calls dialed from the presubscribed telephone for certain predetermined numbers, and preventing or 'blocking' the completion of calls [that] would allow the caller to reach [an OSP] different from the [presubscribed operator service] company."[38] In other proceedings and filings before us,[39] a number of parties have suggested that we redefine call blocking so that it applies to 800, 950, and 10XXX-0+ traffic only.[40] This revision would allow OSPs the option of blocking 10XXX-1+ traffic in order to protect against unauthorized, fraudulent, or otherwise uncollectible calls being charged to payphone owners and other "hospitality"-type aggregators, such as hotels, hospitals, airports, and universities, who may be particularly vulnerable to this type of fraudulent or unauthorized calling from their telephones. Parties supporting the refined definition state that while an OSP receiving a 0+ call can collect all pertinent billing information and bill the end-user for the call, 1+ calls are usually charged to the originating line by a carrier with whom the aggregator has no account. Even when the call is placed by the end-user in anticipation that he will be billed for the call (*e.g.*, from a hotel guest room), the aggregator may receive the bill from the carrier long after the guest has left. The parties state that if 10XXX-1+ blocking is allowed, callers will still have access to their carrier of choice through 800, 950, or 10XXX-0+ dialing.

20. It appears that the blocking of 1+ calls may have an insubstantial impact on the ability of callers to access their carriers of choice, while at the same time serving as an effective means of protecting against unauthorized or uncollectible calls.[41] Therefore, we seek comment on whether the blocking prohibition proposed in this Notice should apply only to 0+ calls,[42] and we propose the adoption of the following definition: call blocking occurs when an end-user is prevented from accessing the preferred carrier through alternative dialing methods -- 800, 950, and 10XXX-0+. Nevertheless, because it appears that some existing equipment may not be technically capable of blocking 1+ traffic without also blocking 0+ calls, we

seek comment on the extent to which our proposed rules and policies might be applied to 1+ calls and how such an application could be narrowly tailored to affect only the appropriate classes of 1+ calls.[43]

21. The final part of Section 64.704 prohibits the payment of any compensation by OSPs to call aggregators at locations where blocking occurs. This provision is intended to reduce or eliminate an incentive aggregators may have to engage in blocking, and we emphasize that this provision would cover all types of compensation, including, for example, flat fees, per call charges, and various rental arrangements. We seek comment on how this provision should be effectuated.

3. Equipment Capabilities

22. We expect OSPs and call aggregators to take maximum advantage of the capabilities of their existing networks and equipment to implement our blocking prohibition and ensure consumer choice. We are aware, however, that there are telephones at many locations for which 10XXX access is not available because of a combination of network design and equipment limitations. We therefore propose the amendment of Section 68.318 with the intention of requiring the modification or replacement of PBXs and other customer premises equipment (CPE) that is technically incapable of providing access through each of the three access code dialing sequences, 800, 950, and 10XXX-0+. Under the new subsection (d), both new and existing equipment must have or be modified to have the capability of providing access to interstate common carriers through the use of each of the three access codes within eighteen months of the effective date of the proposed rule. Further, existing equipment that is modified to comply with this rule must be re-registered if required by Section 68.214. In order to avoid service dislocations not anticipated by our proposed rule, we believe waivers should be granted when there is a clear showing that compliance with the rule is not technically or economically feasible and that our existing procedures, such as Part 68 re-registration, cannot accommodate the circumstances. We ask interested parties to recommend standards for the granting of waivers of the modification requirement. In general, we seek comments, along with supporting data, on the extent to which existing software and equipment are technically capable of allowing unrestricted access to 10XXX-0+ dialing and the feasibility of implementing proposed Section 68.318(d) in terms of the costs involved, the time necessary for equipment manufacturers to develop the required hardware and software modifications, and installation timetables.

23. We recognize that the modification of existing equipment may involve software changes, circuit card replacement, or the installation of additional devices. Under Section 68.214 of the Rules, any hardware modification of registered equipment that would result in changes in the information contained in the original Part 68 application may be made only after the granting of a new registration application. Changes that do not result in any change in the information in the original application, such as circuit card changes not affecting protective circuitry, may be made only by the registrant or the registrant's authorized agent. To the extent that the proposal set forth in proposed Section 68.318(d) affects Part 68 compliance, re-registration may be necessary. Such re-registration could be performed by the current registrant, who would then be responsible for implementing the required modifications in compliance with Part 68. Alternatively, the user could register the PBX and install the necessary modification. We note that some 3000 models of PBXs have been registered under Part 68, representing hundreds of thousands of PBXs in use. In some cases, the manufacturer is no longer in business, and there may be no agent authorized to perform the needed modification, thus requiring the user to either re-register the PBX or replace it. We ask commenters to provide data on the number PBXs in use that would require Part 68 re-registration or replacement and on the costs associated with such re-registration or replacement.

24. The majority of extant PBXs are software-controlled, which means that, for those PBXs, compliance with our proposed rule does not require re-registration under Part 68. In order to assure that OSPs and call aggregators implement the blocking prohibition on a consistent basis, however, we propose that only the equipment registrant or the registrant's agent be allowed to make the software changes required to comply with our rule. Under proposed Section 68.318(d)(2), we would permit the registrant or agent to rely on any technology that would effectively prevent the user of the equipment from inadvertently or intentionally reprogramming the equipment to circumvent the requirements of our proposed rule. For example, the access code sequence control software might contain secret codes or be embedded in "read only memory" (ROM) integrated circuits obtainable only from the manufacturer of the equipment. We seek comment on the feasibility, cost, and time necessary for such software changes to be made.

4. Unanswered and Uncompleted Calls

25. We next request comment on proposed restrictions on billing practices related to the provision of operator services, beginning with charges for unanswered or uncompleted calls. The Commission receives numerous complaints from consumers who allege they are being billed by carriers for such calls. Charges associated with unanswered or uncompleted calls are often attributed to the lack of answer supervision capabilities[44] in areas where equal access is not available.[45] Without answer supervision, carriers are incapable of properly monitoring the progress of calls forwarded through the network and may inadvertently charge callers for unanswered or uncompleted calls if, for example, the carrier automatically begins charging after a certain number of rings. In other cases, carriers may actually lose revenues if the lack of answer supervision results in the carrier's billing equipment not being activated. In our *Section 68.314 Rule Making*, we are reviewing in detail the technical aspects of answer supervision and are considering the adoption of rules aimed at, *inter alia*, identifying the conditions and circumstances under which answer supervision should be required and those instances in which unanswered and uncompleted calls should be exempted from billing.[46] We seek comment on the need for and feasibility of adopting a rule that would prohibit operator service providers from charging any caller for unanswered or uncompleted calls. We expect that any such requirement would closely track the rules and policies ultimately adopted in our *Section 68.314 Rule Making*. We encourage interested parties to consider fully the proposals set forth in that proceeding when fashioning their comments.

5. Call Splashing

26. Proposed Section 64.705 addresses the problem of call splashing. As described in the *TRAC Order*, call splashing occurs when an OSP transfers a call to another carrier at a point different from that at which the caller is located, thereby causing the caller's bill to contain a charge that reflects the transfer of the call at the distant point.[47] The Call Splashing Task Force, assembled for the purpose of identifying and recommending possible solutions to the splashing problem, has suggested that we adopt the following definition, which it believes will facilitate industry efforts to eliminate the problem: "[c]all splashing occurs when a call transfer (whether caller-requested or OSP-initiated) results in incorrect billing because the point from which the call is rated and/or billed is different from the point from which the call originates."[48] The Task Force states that the refined definition reflects the need to differentiate call splashing from those situations where a call is simply "handed off" or "transferred" from one OSP to another. We tentatively conclude that the definition suggested by the Task Force more appropriately reflects the nature and extent of the splashing problem and should be adopted for the purpose of applying proposed Section 64.705. We invite comments, however, on whether and to what extent even this new definition should be modified.

27. Many of the problems associated with call splashing may be eliminated when call blocking ceases, since customers will be able to dial their carriers of choice directly. Because call splashing results in incorrect billing to the consumer, however, we would be concerned if any splashing occurs. Therefore, our proposed rule in Section 64.705 directs OSPs to eliminate the practice of call splashing.

28. The Call Splashing Report suggested a myriad of solutions to the call splashing problem, some of which have advantages that may make them more effective than others. For example, one recommendation would require OSPs to modify their systems to provide reorigination of calls back to pay telephones or to CPE located on aggregator premises. According to the Report, reorigination capability at the CPE would: allow transferred calls to be correctly rated and billed by the OSP receiving the transferred call; spare the customer the inconvenience of redialing; solve billing problems associated with splashing; avoid transmission degradation; and reduce the originating OSP's problems with unnecessary switched access connections and associated costs. The Call Splashing Report also states, however, that such a requirement will likely involve substantial replacement or modification of existing CPE and payphone equipment by OSPs or aggregators and payphone owners, as well as the development of new switching capabilities to generate the reorigination tone. We invite comment generally on the recommendations in the Call Splashing Report as solutions to the splashing problem. We encourage parties commenting on these proposals to provide supporting data on equipment replacement and modification requirements as well as implementation costs and timetables.

6. Access Codes of Interexchange Carriers

29. The last rule that we specifically propose, Section 64.706, concerns the access codes of interexchange carriers. By requiring carriers to establish at least one alternative to "10XXX"[49] access under subsection (a), we hope to mitigate any lingering problems with equipment that is incapable of providing 10XXX access because of technical limitations or its inability to protect against fraud. With such an alternative, customers should be technically able to exercise their right to contact their preferred carriers. The establishment of an alternative to 10XXX access may not be a complete solution to blocking problems, however, because other access codes can also, in theory, be blocked. Nevertheless, such an alternative should provide some relief from splashing problems that occur when a call must be transferred at a distant point because the caller is technically unable to use the 10XXX access code and no alternative is available for the preferred carrier.

30. Subsection (b), requiring LECs to provide access codes to calling customers upon request, will allow customers to use readily the codes that carriers must establish under subsection (a). By subsection (b), we intend only that the LECs must provide the access codes for specifically requested carriers. We seek comment on whether such information is readily available to LECs and whether LECs will, in a practical sense, be able to provide it to callers.

31. In subsection (c), we propose a rule requiring each LEC to place in every edition of any "white pages" telephone directory it distributes, supplies, or provides, a set of instructions indicating the ways by which the 10XXX, 950, and 800 dialing methods can be used to reach interexchange carriers and OSPs. The LECs would also be required to list the 10XXX codes and the 950 and 800 numbers of interexchange carriers and OSPs serving any part of the area that is the subject of the directory. Under this subsection, LECs would be prohibited from charging carriers and OSPs for listing such information, and the listed carriers and OSPs would be responsible for supplying the necessary information for this listing. These requirements would take effect ninety days after the adoption of this section. As an alternative to this subsection, we could instead require carriers and OSPs to place advertisements listing their access codes in the appropriate telephone directories. We seek comment on these proposals, which will, we hope, ensure that callers have a ready source of the information necessary for reaching their carriers of choice.

32. Our proposed rule in Section 64.706(a) requiring carriers to establish only one alternative to 10XXX access may seem inconsistent with our provision concerning equipment capabilities, Section 68.318(d), because the latter requires equipment to have the capability of processing all access methods. We think it is necessary, however, for equipment to have this broader capability because carriers would, under Section 64.706(a), have the discretion to choose whichever 10XXX alternative they desire. The result will be that some carriers may choose, for example, the 950 alternative, while others may implement 800 access. Under these circumstances, equipment must be able to process all access methods in order to allow callers to reach all carriers in a prompt and convenient way. Similarly, our blocking prohibition, in proposed Section 64.704, must be equally broad so that all carriers may be reached through the methods they choose to implement.

B. Miscellaneous Issues

33. Finally, we seek comment on an additional issue related to operator services. NARUC has recommended that we consider adopting nationwide standards for the handling of emergency calls by OSPs in order to ensure

that such calls are efficiently routed to the appropriate local public safety organization.[50] We have traditionally deferred to the states in this area because the overwhelming majority of emergency calls are local in nature and the handling of such calls is of primary concern to local communities. State agencies have been active in ensuring that operator service providers complete emergency calls efficiently and have adopted different standards to address this particular situation. Nevertheless, in light of NARUC's request that we explore the extent of problems concerning emergency calls, we invite interested parties to comment on the appropriate federal role in the resolution of such problems.

34. In the discussion above, we have generally raised a wide array of alternatives to the rules that are actually proposed. We encourage attention to and seek comment on these alternatives so that we may develop a record that will allow us to consider fully the implications of both the proposed rules and their alternatives. Our final determination will then be made with a view toward adopting the most effective and appropriate provisions of both. More broadly, we seek comment on the extent to which the proposed rules, or a combination of some but not necessarily all of the proposals, are necessary for achieving our goal in this proceeding, which is to assure that consumers are fully informed about their operator service options and are able to choose freely among the available services and providers.

IV. LEGAL ISSUES

35. OSPs, as providers of interstate common carrier service, are squarely within our jurisdiction under Title II of the Communications Act. We also tentatively conclude that we have jurisdiction over call aggregators, such as hotels, under Title II.[51]

36. We intend to exercise our jurisdiction against offending OSPs and aggregators alike by making appropriate use of our forfeiture authority. This authority under Section 205(b) of the Communications Act[52] has recently been increased so that we can now impose a forfeiture of up to $12,000 per offense against any carrier or agent of a carrier who knowingly fails or neglects to obey any Commission order prescribing just, fair, and reasonable practices. This section provides that every distinct violation is a separate offense and that, in the case of a continuing violation, each day is to be deemed a separate offense. Further, under the recently amended Section 503, we can impose substantial forfeitures for willful and repeated general violations of the Act or our Rules, regulations, or orders: for common carriers subject to the Act, up to $100,000 for each violation or each day of a continuing violation, up to a total of $1,000,000 for a continuing violation; and for others, up to $10,000 for each violation or day of a continuing violation, up to a total of $75,000.[53] We will not hesitate to use our forfeiture authority against violators of our Rules.

V. REGULATORY FLEXIBILITY ACT INITIAL ANALYSIS

37. **Reason for Action.** The Commission is issuing this Notice of Proposed Rule Making to provide an opportunity for public comment and to provide a record for a Commission decision on the issues stated above.

38. **Objectives.** The objective of this Notice of Proposed Rule Making is to ensure that operator services are provided in a manner that fosters a fully competitive operator services industry and that allows calling customers to exercise choice freely in selecting services.

39. **Legal Basis.** Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 303(r).

40. **Description, potential impact, and number of small entities affected.** The proposed rules will mandate that entities in the operator services industry provide information that is necessary for customers to make knowledgeable choices among services. The rules will also help to eliminate certain practices and charges involving the provision of operator services that reduce customer choice and competitiveness within the industry. The equipment modifications required under the proposed rules will likewise further these goals. Small entities, especially certain call aggregators, may feel some economic impact due to the proposed equipment modification requirements, but we have proposed the granting of waivers to lessen such burdens when appropriate. In addition, this Notice seeks comments and evidence regarding the actual impact on small entities.

41. **Reporting, recordkeeping, and other compliance requirements:** The proposed rules require reporting in the form of the disclosure by operator service providers and call aggregators to their customers of certain information regarding their identities, their services, and the options customers have in using those services.

42. **Federal rules which overlap, duplicate, or conflict with the Commission's proposal:** None.

43. **Any significant alternatives minimizing impact on small entities and consistent with stated objectives:** We have indicated a willingness to waive the proposed blocking and equipment modification requirements in the appropriate circumstances. In addition, we have suggested alternatives to several of the proposed rules and have requested comment on them.

44. **Comments are solicited.** We request written comments on this Initial Regulatory Flexibility Analysis. These comments must be filed in accordance with the same filing deadlines set for comments on the other issues in this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to this Regulatory Flexibility Analysis. The Secretary shall send a copy of the Notice to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act. *See* 5 U.S.C. § 601, *et seq.*

VI. EX PARTE REQUIREMENTS

45. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a) of the Commission's Rules, 47 C.F.R. § 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that

the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f) of the Commission's Rules, 47 C.F.R. § 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by the Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203 of the Commission's Rules, 47 C.F.R. § 1.1203.

46. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b) of the Commission's Rules, 47 C.F.R. § 1.1202(b). Any person who makes or submits a written *ex parte* presentation shall provide on the same day it is submitted two copies of same under separate cover to the Commission's Secretary for inclusion in the public record. The presentation (as well as any transmittal letter) must clearly indicate on its face the docket number of the particular proceeding(s) to which it relates and the fact that two copies of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation.

47. Any person who in making an oral *ex parte* presentation presents data or arguments not already reflected in that person's written comments, memoranda, or other previous filings in that proceeding shall provide on the day of the oral presentation an original and one copy of a written memorandum to the Secretary, with a copy to the Commissioner or staff member involved, which summarizes the data and arguments. The memorandum, as well as any transmittal letter, must clearly indicate on its face the docket number of the particular proceeding and the fact that an original and one copy of it have been submitted to the Secretary, and must be labeled or captioned as an *ex parte* presentation. Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206.

48. All relevant and timely comments and reply comments will be considered by this Commission. In reaching our decision, this Commission may take into account information and ideas not contained in the comments, provided that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of this Commission's reliance on such information is noted in the Order.

VII. CONCLUSION AND ORDERING CLAUSES

49. In summary, the rules proposed in this Notice are intended to remedy problems related to operator services that have thwarted customer choice and have impeded and distorted the operation of a fully competitive operator services industry. By requiring both operator service providers and call aggregators to provide customers with information on their services, we hope to eliminate the situation in which consumers are unaware of how to exercise their options in the operator services field. We also intend these rules to prohibit practices such as call blocking and splashing that are inimical to the exercise of customers' rights and to competition in the industry. Consistent with this aim, the proposed rules require the modification of equipment that blocks calls. Overall, we expect the proposed rules to free customers from charges they did not agree to and from practices that prevent them from using the operator service provider they prefer. These rules will also help foster a marketplace environment in which operator service providers compete based on the merits of their services, rather than on the payments they provide to aggregators who deliver to them a captive clientele. Interested parties are invited to submit comments and supporting data that will assist us in pursuing these goals. We are particularly interested in evidence regarding the technical and operational complexities of implementing the proposed rules and the economic impact of implementation in terms of costs to or burdens on consumers, carriers, and call aggregators.

50. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 201-205, 218, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 218, 303(r), that a NOTICE OF PROPOSED RULE MAKING IS ISSUED, proposing the amendment of 47 C.F.R. Parts 64 and 68 as indicated above.

51. IT IS FURTHER ORDERED, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415, 1.419, that all interested parties may file comments on the matters discussed in this Notice and the proposed rules contained in the Appendix below by **September 7, 1990**, and reply comments by **October 9, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants wish each Commissioner to have a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

52. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau, is delegated authority to require the submission of additional information, make further inquiries, and modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

53. IT IS FURTHER ORDERED that the Secretary shall cause a copy of this Notice, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a) (1981). The Secretary shall also cause a summary of this Notice to appear in the Federal Register.

54. IT IS FURTHER ORDERED that the Petition of the National Association of Regulatory Utility Commissioners, RM-6767, filed April 17, 1989, IS GRANTED to the extent indicated herein and is otherwise DENIED. All related pleadings and comments filed with regard to NARUC's petition are hereby incorporated by reference.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX
PROPOSED RULES

It is proposed that Part 64 of Title 47 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, unless otherwise noted.

2. A new Section 64.703 is added to read as follows:

§ 64.703 Customer information.

(a) An operator service provider shall:

(1) identify itself, audibly and distinctly, to the customer before the customer incurs any charges;

(2) after the identification, allow sufficient time before the call is connected to permit the customer either to terminate the call at no charge or to advise the operator to transfer the call to the customer's preferred interstate or international common carrier at no charge; and

(3) disclose immediately, upon request by, and without charge to, the customer,

(A) the rates or charges for the customer's intended call;

(B) the methods by which such rates or charges will be collected; and

(C) the methods by which complaints concerning rates, charges, or collection practices will be resolved.

(b) Each call aggregator shall display plainly on or in close proximity to all telephones available for customer use, or shall provide to customers personally, printed documentation containing:

(1) the name(s), address(es), and toll-free telephone number(s) of the operator service provider(s) to which the telephones are presubscribed;

(2) a statement that the rates of the operator service provider(s) will be quoted upon request; and

(3) a written disclosure that informs customers that they have a right to obtain access to the carrier of their choice if said carrier provides service in that area and that informs them of how to contact that carrier.

(c) Satisfaction of the requirements of subsection (b) shall be the joint responsibility of the operator service provider, the call aggregator, and the owner of the telephone; applicable contracts or tariffs, if any, shall be modified accordingly.

3. A new Section 64.704 is added to read as follows:

§ 64.704 Call blocking prohibited.

(a) Call blocking occurs when an end-user is prevented from accessing the preferred carrier through alternative dialing methods – 800, 950, and 10XXX-0+.

(b) Operator service providers shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(c) Call aggregators shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(d) Owners of pay telephones shall neither require nor participate in the blocking of any customer's access to the customer's carrier of choice.

(e) Applicable contracts or tariffs shall be modified so as to effectuate the provisions of subsections (b), (c), and (d).

(f) Operator service providers shall not pay compensation of any kind to call aggregators at locations at which any blocking of access to any common carrier occurs.

4. A new Section 64.705 is added to read as follows:

§ 64.605 Restrictions on charges related to the provision of operator services.

Call splashing. Operator service providers shall not charge customers for a distance that is more than the distance, in a straight line, between the calling party's point of origination and point of termination of the telephone call.

5. A new Section 64.706 is added to read as follows:

§ 64.706 Access codes of interexchange carriers.

(a) All interexchange common carriers shall establish within twelve (12) months of the effective date of this section a "10XXX" access code and at least one alternative form of access (*e.g.*, a "950" or an "800" number).

(b) Local exchange carriers shall provide to calling customers, upon request, the access codes for specifically requested carriers operating in that local exchange area.

(c) Each local exchange carrier shall place in every edition of any "white pages" telephone directory it distributes, supplies, or provides on or after [ninety (90) days after the adoption of this section]:

(1) instructions indicating the ways by which the 10XXX, 950, and 800 dialing methods can be used to reach interexchange carriers and operator service providers; and

(2) a listing of the 10XXX access codes and the 950 and 800 numbers of interexchange carriers and operator service providers that serve any part of the area that is the subject of the directory. This listing shall be placed by the local exchange carrier at no cost to the listed carriers or

operator service providers, and the listed carriers and operator service providers shall bear responsibility for supplying the necessary information for this listing.

It is proposed that Part 68 of Title 47 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 68 continues to read as follows:

AUTHORITY: Secs. 4, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, 48 Stat. as amended, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 154, 201, 202, 203, 204, 205, 208, 215, 218, 313, 314, 403, 404, 410, 602, unless otherwise noted.

2. Section 68.318 is amended by adding paragraph (d) to read as follows:

§ 68.318 Additional limitations.

*****

(d) *Requirement that registered equipment allow access to common carriers.*

(1) Any equipment that is manufactured, imported, or installed more than eighteen (18) months after the effective date of this subsection and that is used by any call aggregator shall be capable of providing callers with access to common carriers through the use of all access methods -- 800, 950, and 10XXX-0+.

(2) All equipment used by call aggregators shall, within eighteen (18) months of the effective date of this subsection, provide callers with access to common carriers through the use of all access methods -- 800, 950, and 10XXX-0+. Such equipment shall be modified as necessary and re-registered if required by Section 68.214. Any software modifications required to achieve compliance with this subsection shall be installed in a manner that cannot readily be altered by the user.

FOOTNOTES

[1] 47 U.S.C. § 151.

[2] The vast majority of "0" calls fall into one of three categories: calling card, collect, and third number billing. We recently noted that while operator services used to require the intervention of a human operator, some functions previously performed by human operators are now sometimes performed by computers. *See* Competition in the Interstate Interexchange Market, Notice of Proposed Rule Making, CC Docket No. 90-132, FCC No. 90-90, para. 76, n.125 (released April 13, 1990). For the purposes ofthis Notice, we use the term "operator services" to refer to "0" calls, whether or not they require the intervention of an operator.

[3] Complaints concerning operator services comprise the single largest category of consumer complaints received by the Common Carrier Bureau (Bureau), with 125 to 150 informal complaints currently being filed each month. Since early 1988, thousands of these complaints have been filed.

[4] An operator service provider ("OSP") as used here is any entity that provides operator services, including AT&T as well as the newer entrants into the operator services industry. We will use the term "alternative operator service" provider or "AOS" where necessary to distinguish then ewer providers.

[5] *See* United States v. American Tel. & Tel. Co., 552 F. Supp. 131 (D.D.C.1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[6] "Call aggregators," as we use the term in this Notice, are entities that have telephones available for use by their customers, patrons, or other transient users. Aggregators include, for example, hotels, hospitals, airports, and universities.

[7] *See* Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization: Notice of Inquiry and Proposed Rule Making, 77 FCC 2d 308 (1979) ("*Notice*"); First Report and Order, 85 FCC 2d 1 (1980) (" *First Competitive Carrier Order* "); Further Notice of Proposed Rule Making, 84 FCC 2d 445 (1981) (" *Further Notice* "); Second Report and Order, 91 FCC 2d 59 (1982) (" *Second Competitive Carrier Report* "), *recon. denied*, 93 FCC 2d 59 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (*"Fourth Competitive Carrier Order* "); Fifth Report and Order, 98 FCC 2d 1191 (1984) (" *Fifth Competitive Carrier Order* "); Sixth Report and Order, 99 FCC 2d 1020, *vacated and remanded sub nom.* MCI v. FCC, 765 F.2d 1186 (D.C. Cir. 1985); (hereinafter collectively" *Competitive Carrier* ").

[8] Telecommunications Research and Action Center v. Central Corporation, et al., 4 FCC Rcd 2157 (Com. Car. Bur. 1989) (hereinafter " *TRAC Order* ").The Bureau concluded that while most controversies over operator services concern "0+" calls, the issues and remedies adopted in the order are equally applicable to "1+" calls, which include calls from coin-operated telephones that are paid in cash, the so-called "sent paid" calls. *Id.* at 2160, n.4.

[9] *TRAC Order*, 4 FCC Rcd at 2159. The Bureau, however, denied the complaint insofar as it sought a reclassification of the defendant AOS companies as dominant carriers under the Commission's regulatory structure and revocation of their operating authority. *Id.* at 2158. The Bureau also concluded that the complainants had provided no facts or arguments that would be legally sufficient to sustain a finding that the defendants' rates were unjust and unreasonable under the Act. *Id.*

[10] 4 FCC Rcd at 2159.

[11] *Id.*

[12] *Id.*

[13] The *TRAC Order* defines call blocking as

> the process of screening the calls dialed from the presubscribed telephone for certain predetermined numbers, and preventing or "blocking" the completion of calls [that] would allow the caller to reach [an OSP] different from the [presubscribed operator service] company.

4 FCC Rcd at 2160 n.6. We noted above that the *TRAC Order* extends the blocking prohibition to 1+ as well as 0+ traffic. *See supra* note 8. Asdiscussed below, we tentatively conclude that the blocking definition should be refined to allow OSPs the option of blocking 1+ traffic .

[14] 4 FCC Rcd at 2159. The Bureau stated, however, that it would consider petitions to waive the blocking prohibition under some circumstances, such as when an OSP could make the requisite showing that blocking is required in order to prevent fraudulent use of the network. In April 1989, four of the defendants in the *TRAC* proceeding, National Telephone Services, Inc., International Telecharge, Inc., Payline Systems, Inc. and Telesphere Network, Inc. filed petitions requesting general, systemwide waivers of the *TRAC Order*'s blocking prohibition so as to allow blocking of 10XXX access.

[15] 4 FCC Rcd at 2159.

[16] The *TRAC Order* describes "call splashing" as occurring

> when a caller requests a transfer from [a presubscribed operator service] company operator to [the caller's] preferred . . . carrier. Since the call is handed off to the preferred carrier in the city where the [operator service] company's operations center and switch are located, the point from which the call will be billed will often be different from the caller's originating location, and the call may be billed at a rate different than the caller may have anticipated.

Id. at 2160 n.5. For the reasons discussed below, however, we tentatively conclude that the call splashing definition should be refined to reflect more appropriately the nature and extent of the splashing problem and to facilitate industry efforts to obtain a workable solution.

[17] 4 FCC Rcd at 2159.

[18] On March 29, 1989, the complainants filed an application for review of the Bureau's decision.

[19] *See* Petition of the National Association of Regulatory Utility Commissioners, RM-6767 (filed April 17, 1989) (hereinafter "NARUC Petition").

[20] The provision of AOS services had been the subject of considerable discussion and study by NARUC prior to the time it filed its Rule Making petition. *See, e.g.*, NARUC Staff Subcomm. on Telecommunications, State Task Force Report on the Results of the Alternative Operator Services(AOS) Survey (June 24, 1988); NARUC Staff Subcomm. on Telecommunications, State Task Force Report on the Results of the Alternative Operator Services (AOS) Survey II (February 15, 1989).

[21] NARUC Petition at 7.

[22] NARUC Petition at 5.

[23] NARUC Petition at 5-6.

[24] NARUC Petition at 7.

[25] Public Notice, DA 89-571 (released May 23, 1989).

[26] *See, e.g.*, Comments of Pacific Bell and Nevada Bell Telephone Companies; Comments of National Association of State Utility Consumer Advocates; Comments of Florida Public Service Commission; Comments of Iowa State Utilities Board; Comments of The American Public Communications Council; Comments of The National Telephone Cooperative Association.

[27] *See, e.g.*, Comments of National Telephone Services, Inc.; Comments of International Telecharge, Inc.; Comments of Telesphere Network, Inc.; Comments of U.S. Operators, Inc.; Comments of The Operator Service Providers of America; Comments of U.S. Long Distance, Inc.

[28] As noted above, consumer complaints regarding OSP rates and practices continue to comprise the single largest category of complaints received by the Common Carrier Bureau. On April 10-11, 1990, staff members from our Washington, D.C. office and our thirty-five field offices conducted an informal nationwide audit of selected telephones in an effort to gauge the level of compliance with the *TRAC Order* requirements and to educate call aggregators as well as OSPs about those requirements. While we do not rely on the results of the audit as a basis for our proposed rules,we note that the results do appear to corroborate the fact that problems in the operator services industry generally continue to exist for AOS providers and "traditional" OSPs alike.

[29] The text of the proposed rules is contained in an Appendix to this Notice.

[30] As used herein, the word "customer" refers to a caller who initiates services through an OSP.

[31] *TRAC Order*, 4 FCC Rcd at 2159.

[32] It has been brought to our attention that certain adjunct devices used by aggregators, such as the so-called "store-and-forward" or "bong-in-the-box" devices, allow callers to make and be billed for 1+ calls from an aggregator's telephones, and, as such, the caller is never connected to the presubscribed OSP's live operator for branding purposes. We seek comment on how our branding requirement should be applied when such devices are used.

[33] A number of states, including Florida, Georgia, Kansas, Kentucky, and Massachusetts, currently require some form of double branding. In general, we welcome any comments or evidence from states regarding their experiences with operator services and their efforts to address consumer and industry problems. On February 16, 1990, the Chairman of the FCC solicited comments from all of the state attorneys general about these concerns, and several responses have been received that describe current state laws and regulations in this area. *See, e.g.*, Letter from the Attorney General of Washington to Chairman Alfred C. Sikes (February 26, 1990). These letters and any similar ones received will be included in the record of this proceeding.

[34] In some cases, the owner of the telephone may not be the aggregator on whose premises the telephone is located. For example, a pay telephone that is owned by a LEC or a private company may be located on the premises of an aggregator such as a hotel or airport.

[35] In this regard, proposed Section 64.703 goes beyond the *TRAC Order*, which, in effect, placed the primary responsibility for informing the customer on the operator service provider. *See* 4 FCC Rcd at 2159.

[36] *TRAC Order*, 4 FCC Rcd at 2159.

[37] For example, factors we might consider in deciding whether to grant a waiver could include the size of the aggregator, the realistic prospect of a fraud problem, the limitations of the type of equipment in question,and the cost and time involved in upgrading or replacing the equipment.

[38] 4 FCC Rcd at 2159, 2160 n.6.

[39] *See, e.g.*, Report of the Call Splashing Task Force at 5-6 (June 1, 1989) (hereinafter "Call Splashing Report"); Comments Supporting Waiver Petitions (ENF-89-08), filed May 30, 1989 by U.S. Operators, Inc.; Comments In Support of Waiver Petitions filed May 30, 1989 by ComSystems, Inc., Nycom Information Services, Inc., and Call Technologies, Inc.

[40] The current alternative dialing methods, 800, 950, and 10XXX, are sometimes referred to as "access codes." This term denotes a dialing sequence, unique to individual carriers, that allows a caller to gain access to a particular carrier. The "XXX" is known as the Carrier Identification Code (CIC). CICs are assigned to carriers by Bell Communications Research and are used with both the 10XXX dialing method and the 950 method, in the form of either 950-0XXX or 950-1XXX. *See* Industry Analysis Division, FCC, Report on the Number of Carriers Holding Carrier Identification Codes at 2 (released April 24, 1990) (hereinafter "CIC Report"). It appears that while most OSPs provide at least two of three alternative types of access, AT&T now relies exclusively on 10XXX and does not provide 800 or 950 access to its services.

[41] We recognize, however, that operator-assisted calls may cost more than 1+calls. For example, a hotel guest who is billed directly by the hotel for a 1+ call may be charged less than would be the case with the operator-assisted call that would be necessary if 1+ calls were blocked. We seek comment on the

degree of these cost differentials and on whether such costs outweigh the fraud concerns that justify our permitting 1+blocking.

[42] Pending disposition of this Rule Making proceeding, we will not enforce the prohibition regarding 1+ blocking.

[43] For example, there is no danger of fraud with "sent paid" 1+ calls from pay telephones because the caller pays for these calls in cash. It therefore might be appropriate to apply our blocking prohibition to such calls.

[44] "Answer supervision" is the term used by telephone companies to describe the signal that the called station (or other CPE) emits to tell the telephone companies' billing equipment that a call has been answered and that billing should commence. *See* Petition for Adoption of New Section 68.314(h) of the Commission's Rules, Notice of Proposed Rule Making, CC Docket No. 89-114, FCC No. 89-152, 4 FCC Rcd 4577, 4585n.3 (released June 1, 1989) (hereinafter " *Section 68. 314 Rule Making* ").

[45] Currently, equal access is available for approximately 93% of the nation's telephone lines. As the conversion of the remaining lines to equal access proceeds and answer supervision becomes more readily available, we anticipate that the problem with charges for uncompleted or unanswered calls will decline.

[46] *See Section 68. 314 Rule Making*, 4 FCC Rcd at 4581-83.

[47] *See TRAC Order*, 4 FCC Rcd at 2160 n.5.

[48] Call Splashing Report at 3.

[49] We use "10XXX" generically: it includes all 10XXX-type access codes, including any eventual expansion to 10XXXX. As described in note 40, *supra*, the Carrier Identification Code, XXX, is used in both the 10XXX and the 950 dialing methods. According to the CIC Report, 774 CICs had been assigned as of March 1990. CIC Report at 4. We seek comment on the anticipated length of time until an expansion to a four-digit CIC is required and on what action, if any, the Commission could take to ensure the efficient use of these codes.

[50] *See* NARUC Petition at 7, Appendix C.

[51] Ambassador, Inc. v. United States, 325 U.S. 317, 322, 326 (1945); United States v. AT&T, 57 F. Supp. 451, 454 (S.D.N.Y. 1944), *aff'd sub nom.* Hotel Astor v. United States, 325 U.S. 837 (1945). Any commenters who believe we lack jurisdiction under Title II should also address why we do not have ancillary jurisdiction over call aggregators. *See* 47 U.S.C.§ 152(a) ("The provisions of this act shall apply to all interstate and foreign communications by wire . . . ."). *See* generally United States v. Southwestern Cable Co., 392 U.S. 157 (1968).

[52] 47 U.S.C. § 205(b).

[53] 47 U.S.C. § 503(b)(1), (2).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Petition to Amend Part 87 of the Commission's Rules to allot VHF aeronautical frequencies for the coordination of air show events. RM-7164

ORDER

Adopted: July 13, 1990; Released: July 24, 1990

By the Chief, Private Radio Bureau:

I. INTRODUCTION

1. On October 2, 1989, the International Council of Air Shows (ICAS) filed a petition for rule making to amend Part 87 of the Commission's Rules, 47 C.F.R. Part 87, to dedicate two frequencies for use by personnel engaged in the performance and coordination of air show events. This Order denies a request by the ICAS to allot VHF aeronautical frequencies for the coordination of air show events.

II. BACKGROUND

2. The ICAS states that the recent growth of the air show industry, increasing use of the radio spectrum, and increased population around airports have contributed to a communications problem for that industry. It reports that in 1989 almost 400 air shows have been identified and that its organization has 246 performers. The ICAS contends that the allocation of two frequencies is necessary to enhance safety of the air show industry by allowing better coordination of events and eliminating potential confusion between performers and ground coordinators. Under the ICAS request, one frequency would be used to provide communications for ground-to-ground and ground-to-air coordination and one frequency for air-to-air communications when multi-aircraft teams are performing. In the event dedicated frequencies cannot be allotted, the ICAS suggests that secondary use on flight test frequencies be permitted. This alternative is based on ICAS's belief that such frequencies are generally not used on weekends.[1] Comments were received from air show producers, performers and air show organizations generally supporting ICAS's request for frequencies. The commenters are listed in Appendix A.

3. The Aerospace & Flight Test Radio Coordinating Council (AFTRCC) filed an opposition to the petition for rule making. While AFTRCC agrees that, for safety reasons air shows require uninterrupted communications, it believes the ICAS solution of a special dedicated nationwide allocation is unwarranted and that the ICAS has not demonstrated a need for a nationwide allocation of scarce VHF spectrum for air show purposes.[2] AFTRCC contends that multicom frequencies are better suited to meet the brief and temporary needs of air shows. Multicom frequencies (122.85 and 122.90 MHz) are specifically set aside for activities of a temporary, seasonal or emergency nature involving aircraft in flight, *see* 47 C.F.R. § 87.241. Finally, AFTRCC states that the ICAS assumptions concerning the use of flight test frequencies are not sound because on many occasions flight testing is conducted on weekends. [3] It states that flight test frequencies are vulnerable to interference because aircraft may operate at high altitudes several hundred miles from their base. AFTRCC states that test aircraft operate over extended areas and rely on weak signals for voice communications that are essential to flight safety. Further, it contends that the use of flight test frequencies by other licensees jeopardizes the integrity of such communications, and allowing secondary use on these frequencies could cause interference thereby endangering the safety of life and equipment.[4]

III. DISCUSSION

4. Currently the Commission responds to the communication needs of air show participants by issuing Special Temporary Authority (STA) for the short-term use of frequencies. The Commission considers each request individually and evaluates potential interference based on factors such as the availability of frequencies, the nature of the operations at the airport, and local terrain. Generally, multicom frequencies, which are specifically set aside for temporary events of this nature are made available. If the multicom frequencies are not suitable, other aviation frequencies may be temporarily authorized. Alternatively, Federal Aviation Administration (FAA) Air Traffic Control supervisors may make air traffic control frequencies available. The Commission routinely grants these STAs to ensure the safety of air show events.

5. This petition requires us to determine if the aviation community and the public interest would benefit more by the allotment of two frequencies specifically for air shows or by maintaining the current licensing procedures. The instant proposal could result in a reduction of paperwork for both the Commission and the air show industry in that the air show industry would not have to file STA requests and the Commission would not have to process them. While this benefit is important, in this case it is outweighed by several other factors. First, in many areas of the country the spectrum available for aviation stations is congested. The petitioner requests a nationwide exclusive allocation for air show events. These events, of which there were fewer than 400 last year,[5] usually occur on weekends and are in the same location for only a day or two. It is difficult to justify reserving two frequencies for part time use when the aviation industry is asking for more channels for full time operations such as advisory stations, automatic weather observation stations and automatic terminal information stations. Second, most aviation frequencies are used for safety related communications. ICAS does not address which frequencies could be used for air shows or the potential impact on aviation safety if the frequencies were reassigned. Finally, there is nothing in the record before us indicating that air show safety is compromised under our existing licensing procedures or that the Commission is not responding in a timely manner to the needs of air show participants.

6. The ICAS states that secondary use of flight test frequencies would be an acceptable alternative. The ICAS believes that flight test frequencies are not fully utilized

on weekends and states that permitting air shows the use of such frequencies would virtually assure that a frequency could be found that was not in local use at the time of an air show. The AFTRCC contends that because of weather, air traffic conditions, and production schedules, flight testing is frequently conducted on weekends.[6] The issue of using flight test frequencies on a secondary basis was recently addressed in Docket 89-16. There we stated:

> In short, sharing of these frequencies with unlike services is difficult at best because schedules of telemetry flight tests are unpredictable and delays costly. Further, interference cannot be tolerated. For example, in the event of a crash the telemetry data may be the only means available to determine the cause of the crash. In this case, interference to the telemetry transmission could be disastrous.[7]

Even though GEN Docket No. 89-16 concerned a different frequency band, the reasons for not allowing secondary use are also valid here.

IV. CONCLUSION

7. After careful consideration of this issue we conclude that air show events do not justify an exclusive nationwide allocation of two frequencies for the performance and coordination of these events at this time. While we agree with the ICAS that air show safety requires uninterrupted communications, we have no reason to believe that the current STA procedures are not meeting these needs. The Commission routinely grants all requests for Aviation Services STAs in less than 10 days and generally grants STAs for air show events in 3 to 4 days. We have not received any significant complaints concerning the speed of service of the STA process. Further, there is no showing that secondary use of flight test frequencies for use in air show events is a viable solution. Significant harmful interference could occur to aircraft undergoing testing at high altitudes hundreds of miles from their base and directly affect the safe operation of such aircraft. Allowing secondary use on these frequencies would impair the efficiency and safety of the flight test industry. We will continue to work closely with the FAA and the air show industry to provide aviation frequencies through the STA process to ensure the communications requirements of air show participants are met.

8. Accordingly, IT IS ORDERED pursuant to the authority contained in Section 0.331 and 1.401(e) of the Commission's Rules, 47 C.F.R. §§ 0.331 and 1.401(e), and Section 4(i) of the Communications Act of 1934 as amended, 47 U.S.C. § 154(i), that the petition for rule making filed by the International Council of Air Shows IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller
Chief, Private Radio Bureau

FOOTNOTES

[1] ICAS petition at 2.

[2] AFTRCC opposition at 3.

[3] AFTRCC opposition at 4.

[4] AFTRCC at 4 & 5.

[5] ICAS petition at 1.

[6] Opposition of AFTRCC at 4.

[7] Report and Order, GEN Docket 89-16, 5 FCC Rcd 493 (1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
July 16, 1990

8330-B
C8-517

Released: July 24, 1990

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Wayne Brewies, President
Southern Arkansas Radio Company
Licensee, Station KKOL(FM)
P.O. Box 1066
Hampton, Arkansas 71744

Dear Mr. Brewies:

This letter constitutes a Notice of Apparent Liability (NAL) for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules. This letter also constitutes an admonishment for violations of the Communications Act and the Commission's Rules as set out below.

This action results from the August 15, 1989, complaint against KKOL filed by Ian V. Vickery, Esq., on behalf of Congressman Beryl Anthony, Jr, and concerns KKOL's conduct during the period preceding and following the November 1988 general election. The complaint alleged that KKOL discriminated against the Anthony candidacy when it broadcast "disclaimers" in your voice after each of his spot announcements which stated, "these views are not necessarily the views of this station." The complaint asserted that, by comparison, no such disclaimers were aired after Roger Bell's spot announcements, but rather that "tags" in your voice were broadcast which stated, "vote for Roger, he's one of us." It also claimed that Bell's role as your co-host of KKOL's "The Friday Journal" is relevant to the discrimination allegation.

The complaint further contended that when Mr. Vickery visited KKOL to obtain information in preparation for filing this complaint and to review the station's compliance with the lowest unit charge provision, no political file and only a small part of the public inspection file were made available. The complaint also raised questions about whether KKOL had complied with the political editorializing rule in connection with its endorsement of the Bell candidacy.

Based on the complainant's pleadings and your responses to our September 6, 1989, and January 22, 1990, inquiries, it appears that KKOL violated the political and public inspection rules during Vickery's visits in 1989 and that KKOL violated the political editorializing rule and the lowest unit charge provision during the period prior to the November 1988 election. Finally, it does not appear that KKOL discriminated against the Anthony candidacy in violation of any Commission rule or the Communications Act.

POLITICAL FILE

Section 73.1940(d) requires broadcast stations to maintain and permit public inspection of a complete record of all requests for time made by or on behalf of political candidates, the disposition of each request, and the charges, if any, made for the time. This information must be maintained for two years. Mr. Vickery alleged that when he visited KKOL on June 1, 1989, he was told that such a file was not available. Vickery asserted that he then contacted the station by telephone, confirmed by a June 7 follow-up letter, notifying the station that he would return to the station on June 19, 1989, to inspect the political file. During the June 19 visit, Vickery claimed he was told once more that a political file was not available. On July 28, 1989, Vickery states he again visited the station and was advised that a political file was not available. In reply to our letter of inquiry about the maintenance of a "political file," you admitted that a file was not maintained during the 1988 general election period, nor at any time until this complaint was filed in August 1989, because you did not know one was required. We note that with your response, you enclosed a political file which you contend is now being kept in accordance with the rule.

PUBLIC INSPECTION FILE

Section 73.3526 details the various materials which a station must maintain for public inspection. The complaint indicated that during Vickery's July 28 visit, he asked to look at the public inspection file as well as the political file. Vickery claimed that the public inspection file was incomplete in that it contained only the most recent Form 395, the Annual Employment Report. Your response to our inquiry did not deny the complainant's allegation that a complete public inspection file was unavailable at the time of Mr. Vickery's July 28 visit to the station. It appears from your response that a complete public inspection file is now available.

In view of the foregoing it appears that KKOL wilfully and repeatedly violated Section 73.1940(d) from one year prior to the date of the issuance of this NAL until at least July 28, 1989, and wilfully violated Section 73.3526 on July 28, 1989. Accordingly, pursuant to 47 U.S.C. Section 503(b), Southern Arkansas Radio Company is hereby advised of its apparent liability for a forfeiture of four thousand dollars ($4,000). The amount specified was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act.

POLITICAL EDITORIALIZING

Section 73.1930 sets out the requirements to be followed when a broadcaster either endorses or opposes a legally qualified candidate. When this occurs, the licensee shall, within 24 hours after the editorial, transmit to the other qualified candidate(s) for the same office or the candidate opposed in the editorial, (a) notification of the date and time of the editorial; (b) a script or tape of the editorial; and (c) an offer of a reasonable opportunity for the candidate or a spokesperson of the candidate to re-

spond on the air. You acknowledged that KKOL supported the Bell candidacy and broadcast station endorsements during "The Friday Journal" prior to the 1988 general election. Moreover, you admitted that the station "was not aware of Section 73.1930 at the time" and, thus, did not notify Congressman Anthony in writing within 24 hours of the endorsement, provide a script or tape of the endorsement, or provide a reasonable opportunity for Anthony or his representative to respond on the air to the endorsement. Although you admitted lack of knowledge of the rule, you claimed that unsuccessful attempts were made by telephone to invite Anthony to appear with Bell during KKOL's "Friday Journal." However, since Anthony was not notified of the endorsement or provided with a tape or transcript of its content, the telephone offers did not satisfy your obligation to afford a reasonable opportunity for reply to the endorsement. Therefore, you failed to comply with the requirements of the political editorializing rule.

LOWEST UNIT CHARGE

Section 73.1940(b) requires that during the 45 days preceding a primary election and the 60 days preceding a general election, stations must charge legally qualified candidates no more than the station's "lowest unit charge" (LUC), i.e., rates no higher than those charged the station's most favored commercial or political advertisers "for the same class and amount of time for the same period." It appears that KKOL violated the LUC provision during the period preceding the November 1988 election.

Your "Broadcast Order" sales sheets show that John Dawson purchased 42 30-second spots for $3.50 to be aired October 31 to November 7, 1988, while Congressmen Anthony purchased 72 30-second spots and Roger Bell purchased 46 30-second spots, each paying $7.00 per spot for time to be aired October 23 to November 7. There is nothing on the face of the order sheets to explain whether the spots may have been different classes of time justifying different LUC's.

Your explanation for this disparity is unavailing. You explained that KKOL serves several communities of varying populations and generally charges commercial advertisers disparate rates within the various classes and time periods based on the size of the community the advertiser intends to reach. When applied to purchases of time by legally qualified candidates, this policy is in conflict with Commission precedent. In *The Law of Political Broadcasting and Cablecasting*, 100 F.C.C. 2d 1476, 1516 (1984), the Commission stated that under the LUC provision, broadcasters may not charge candidates different rates based on their charges for the "national" or "local" status of their commercial advertisers. Nor can they charge differing rates based on whether the candidate is running for local, state, or federal office. This interpretation of the LUC provision prohibits KKOL's disparate charges to candidates based on their intention to reach different size communities within the station's service area. Thus, your decision to charge both Congressman Anthony and Roger Bell more than John Dawson because of the sizes of the voting populations of their respective electoral jurisdictions was in violation of the LUC provision, and rebates of the overcharges must be made. In the case of Congressman Anthony, the rebate should be 72 times the overcharge amount of $3.50, or $252.00 total. Roger Bell should be rebated 46 times the overcharge of $3.50, or $161.00 total. You are directed to review all of your available records, and to the extent that these candidates or any other candidates paid more than the LUC in sales not shown on material provided the Commission, the station must also rebate those overcharges.

Based on the above you are ADMONISHED for your violations of Sections 73.1930 and 73.1940(b) of the Commission's Rules. Were it not for the expiration of the statute of limitations (*See* 47 U.S.C. Section 503(b)(6)) we would issue a forfeiture for these violations.

You are directed to submit to the Commission within twenty (20) days of your receipt of this letter, the procedures implemented by KKOL to ensure that this type of conduct does not recur, the further rebates required as a result of your review of possible additional overcharges, and the steps you have taken to refund the overcharges in connection with the LUC violations. The response must be signed by an officer or director of the licensee corporation.

Finally, it does not appear that KKOL is in violation of Section 73.1940(c) of the Commission's rules that prohibits discrimination between competing candidates for public office. Although the Commission *en banc* has not had the occasion to so rule, the staff of the Political Programming Branch, for a number of years, has advised broadcasters and candidates that content-neutral disclaimers are permissible, even when utilized on a selective basis. In particular, the staff has determined that disclaimers such as that used in this case -- "these views are not necessarily the views of the station" -- are not violative of the discrimination rule or the "no censorship" provision of Section 315(a) of the Act. The facts of this complaint, however, suggest that some modification of our previous advice is appropriate to better advance the intent of the no-discrimination rule. In the future, therefore, broadcasters who choose to use a content-neutral disclaimer in connection with a particular candidate's advertising, must use such a disclaimer with all subsequent advertising broadcast on behalf of every candidate for the same office. Thus, while the use of content-neutral disclaimers remains permissible, they can no longer be utilized selectively within any particular race for public office. With respect to the statement "vote for Roger, he's one of us," because it was ordered by the candidate as a part of his spot, we find no discrimination.

With respect to the forfeiture imposed herein, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall contain a detailed factual statement and such documentation and affidavits as may be pertinent." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

Application for Review of the admonishment by the full Commission may be requested within 30 days of the release date of this letter by writing to the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration and, if mailed, should be sent by certified mail. Copies must be sent to the parties to the complaint. 47 C.F.R. Section 1.115.

Sincerely,

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 24, 1990

LOCAL EXCHANGE CARRIERS FILE REVISIONS TO THEIR COST ALLOCATION MANUALS

(PUBLIC COMMENT INVITED)

On June 29, 1990, the following local exchange carriers filed proposed revisions to their permanent cost allocation manuals for the separation of regulated and nonregulated costs:

The Ameritech Operating Companies, Bell Atlantic, BellSouth Corporation, Cincinnati Bell Telephone Company, GTE Telephone Operating Companies, Nevada Bell, NYNEX Telephone Companies, Pacific Bell, Rochester Telephone Corporation, Southern New England Telephone Company, Southwestern Bell Telephone Company, and U S West.

Parties may file comments on the proposed revisions to the cost manuals no later than **August 17, 1990**. Replies should be filed by **August 31, 1990**. A copy of each pleading should be sent to Alicia Dunnigan, FCC, Common Carrier Bureau, 2000 L Street, N.W., Room 812, Washington, D.C. 20554 and to International Transcription Services, Inc., 2100 M Street, N.W., Washington, D.C. 20036, (202) 857-3800. Copies are available for public inspection and copying in the Accounting and Audits Division, public reference room, 2000 L Street, N.W., Room 812, Washington, D.C. Copies are also available from ITS.

For further information contact Alicia Dunnigan, (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRAC COMMUNICATIONS, INC.,
Complainant,

v. File No. E-88-77

DETROIT CELLULAR TELEPHONE COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER

Adopted: July 9, 1990; Released: July 24, 1990

By the Commission:

1. Detroit Cellular Telephone Company (DCTC or petitioner) has asked for reconsideration of the April 24, 1989 decision in this matter, *TRAC Communications, Inc.*, 4 FCC Rcd 3769 (Com. Car. Bur. 1989) (*Order*). [1] The Common Carrier Bureau there found that an exclusivity provision in DCTC's contract with TRAC Communications, Inc. (TRAC) violated the Communications Act of 1934 (the Act) and contravened the Commission's policies requiring that cellular licensees permit unrestricted resale of their underlying services. For the reasons discussed below, we deny DCTC's Petition.

I. BACKGROUND

2. The Bureau's *Order* resolved issues that had been ordered by the United States District Court for the Eastern District of Michigan (the court) to be referred, under the doctrine of primary jurisdiction, to the Commission. At the direction of Bureau staff, TRAC had initiated the proceeding by presenting such issues through the complaint process.[2]

3. Petitioner, DCTC, is the "Block A", or non-wireline, licensee providing cellular service in the Detroit, Michigan market. From September 1984 until July 1985 when its own system became operational, DCTC resold cellular service it obtained from Detroit SMSA Limited Partnership (Ameritech), the "Block B" or wireline cellular licensee in the Detroit market. TRAC is a reseller of cellular service in the Detroit market. From September 1984 until July 1985, it resold only DCTC's service, making TRAC, in effect, a reseller of a reseller's service during that period. TRAC's provision of cellular service at that time was the subject of a contractual arrangement with DCTC which it entered into on October 30, 1984 and terminated two years later (the 1984 Agreement).

4. Paragraph 14 of the 1984 Agreement contained the challenged exclusivity provision and provided that TRAC:

> shall neither purchase, nor solicit, promote, offer, or take orders or requests for, any Cellular Radio Telephone Service other than [DCTC's] Service. DCTC shall have the right to market [its] Service, directly or indirectly, to the public, to appoint sales representatives to offer and take requests for [its] Service and obtain subscribers thereto and to enter into other resale or wholesale agreements with respect to [its] Service.

Contemporaneous with the expiration of the 1984 Agreement, TRAC entered into a non-exclusive agreement with Ameritech for TRAC to resell Ameritech's cellular services in the Detroit market. TRAC and DCTC thereafter entered into a new agreement on March 26, 1987, retroactive to September 1986, which did not contain the exclusivity provision the Bureau's *Order* found unlawful. In sum, TRAC has been reselling both Ameritech and DCTC service since October 1986.

5. The Bureau's *Order* found the exclusivity provision unlawful because DCTC had unreasonably "restricted resale of cellular services furnished over [its] licensed cellular facilities from July 1985 until October 30, 1986, when DCTC finally allowed TRAC to resell both DCTC and Ameritech's services." *Id.*, 4 FCC Rcd at 3771. [3]

II. CONTENTIONS OF THE PARTIES

6. In asking that the *Order* be set aside, DCTC takes the position that the *Order* is inconsistent with the record in this proceeding and the applicable law and policy. DCTC further asserts, *inter alia*, that the Bureau "gave no consideration to any of the evidence presented by DCTC in its Answer . . . . [to the complaint and in its petition for declaratory ruling, Appendix A to DCTC's Answer]."[4] Finally, DCTC alleges that the *Order* misapplied prior Bureau and Commission decisions on resale of cellular service and resulted in the retroactive application of a new Commission policy interpretation.[5] On the other hand, TRAC asserts that the *Order* simply applied longstanding policy to the exclusivity provision at issue and correctly found that provision unlawful.

7. In support of its assertion that the Bureau gave inadequate consideration to evidence of record it considers "pivotal", DCTC faults the *Order* for mentioning certain affidavits only in passing, or not at all.[6] As an example, DCTC refers to the statement of its president that TRAC and its owners "had been unwilling or unable to negotiate a resale agreement with Ameritech . . . " in 1984 when TRAC approached DCTC in order to resell the cellular service DCTC was providing.[7] DCTC argues that TRAC's claims that it lost those customers that would have preferred Ameritech's service are without merit if TRAC could not come to a resale agreement with Ameritech.[8] DCTC states that TRAC has not submitted evidence that it lost customers because it was unable to resell Ameritech service.[9] DCTC also refers to an affidavit expressing an economist's opinion that DCTC's arrangement with TRAC had a procompetitive effect before DCTC's own system became operational in July of 1985.[10] DCTC also relies on evidence indicating that Ameritech had "more substantial" credit requirements for agents or resellers than those of DCTC to support its disputed contention that TRAC "did not wish to deal with Ameritech" in 1984 and 1985.[11]

8. In asking that DCTC's Petition be denied, TRAC asserts that it rests in large part upon "the fallacious assumption that the [court's] Referral Order called upon the Commission to become a trier of fact as to Count II of

TRAC's Amended Complaint before the [court]."[12] TRAC maintains that even if the facts now advanced by DCTC were relevant to our views on the legal issues referred by the court,[13] DCTC was "grossly untimely" in presenting them.[14] Furthermore, TRAC maintains that DCTC's president is not a competent witness as to any negotiations between TRAC and Ameritech and, thus, the Bureau properly ignored his "unsupported opinion as to what 'appears' to him to have been the reason that TRAC did not become a reseller of Ameritech service in 1984."[15] Further, TRAC asserts that the *Order* fairly summarized the DCTC arguments based upon the Hausman affidavit and that his antitrust analysis was more relevant to the Count I (Clayton Act) action before the court than to the Count II (Communications Act) issues referred by the court to the Commission. TRAC maintains that "DCTC's real complaint is not that the Bureau failed to consider these arguments, but that it considered and rejected them."[16] TRAC also asserts that DCTC has mischaracterized the deposition of TRAC's vice president, Russell Kohlman; that the Talty and Buhle affidavits relied upon by DCTC do not constitute competent evidence of any relevant fact; and that DCTC's newly-presented evidence does not undermine the validity of the *Order*'s conclusion.[17]

9. In support of its contention that the *Order* is inconsistent with Commission precedent, DCTC argues, for the first time, that the Commission's unrestricted resale requirement was "specific only to the wireline licensee" in 1985, relying on *Detroit SMSA Limited Partnership*, Mimeo No. 5769 (released July 9, 1985) (*Detroit SMSA*) (Ameritech required to provide capacity on a non-discriminatory basis).[18] DCTC asserts that only wireline licensees were required to provide such non-discriminatory capacity in 1985 and faults the Bureau for applying that standard retroactively to its 1985 conduct.

10. On the other hand, TRAC asserts that DCTC has grossly mischaracterized Commission policy and precedent. According to TRAC, it has been clear since the cellular service rules were adopted in 1981 that the unrestricted resale requirement applied to both wireline and non-wireline carriers. TRAC maintains that the language relied on by DCTC related only to the manner in which a wireline carrier was obliged to fulfill that obligation, *i.e.*, by providing system capacity to non-affiliated retailers on the same terms and conditions as to its own distribution arm.[19]

III. DISCUSSION

11. It is clear that the Commission's unrestricted resale policy and requirements for cellular licensees have been applicable to all such licensees, both wireline and non-wireline carriers, since the Commission adopted its cellular rules in 1981. In enunciating that policy, the Commission did not distinguish between resale of services of wireline and nonwireline carriers.[20] On the contrary, as the Bureau *Order* noted, the Commission stated in broad, sweeping language that:

> restriction of cellular resale is contrary to the public interest for reasons similar to those set forth in [*Resale of Switched Services*]. Therefore, pursuant to our licensing authority set forth in Section 309 of the Communications Act we will condition radio licenses awarded to system operators such that no restrictions on resale and shared use of cellular services will be permitted.[21]

12. On its face, this 1981 Commission statement renders DCTC's resale restrictions unlawful. DCTC's attempt to avoid the force of this language through reliance on two subsequent decisions is unavailing. First, the fact that Commission staff applied the policy to a wireline carrier in a particular case[22] does not in any way suggest it did not equally apply to non-wireline carriers. Indeed, the staff also applied the policy to a non-wireline carrier.[23] Second, the Commission's decision in *Cellular Telephone Co.*, 3 FCC Rcd 6274 (1988), supports, rather than undercuts, the Bureau's *Order*. In that decision, the Commission again stated that its policy against cellular resale restrictions "did not distinguish between wireline and non-wireline resale." 3 FCC Rcd at 6275. Accordingly, the Commission affirmed a staff decision requiring a non-wireline carrier to provide resale service to the wireline carrier in the market and stated that a change in this policy could only be made through a Rule Making proceeding. DCTC's suggestion that a footnote in that decision relating to the comments of the wireline carrier about other kinds of vertical restrictions that might be permissible[24] somehow constituted a Commission decision that resale restrictions are permissible, and that the Bureau's *Order* is therefore a retroactive departure from such a decision, is thus without merit.

13. Contrary to DCTC's contention that the Bureau gave no consideration to the evidence it presented,[25] all evidence of record was considered and given appropriate weight by the Bureau in adopting its *Order*. Among other proposed factual findings DCTC apparently would have us make is that TRAC was unwilling or unable to negotiate a resale agreement with Ameritech at the time that it was negotiating its 1984 Agreement with DCTC.[26] While there is probative evidence in the record to the contrary, even if we were to assume, *arguendo*, that TRAC had been unwilling or unable to negotiate an agreement with Ameritech, as DCTC maintains, this is inapposite to the thrust of the Bureau's finding that DCTC's exclusivity provision was unlawful on its face. Moreover, this conclusion would not be affected by the fact that TRAC could have terminated the 1984 Agreement before 1986, that TRAC presented no evidence that it lost customers because of the exclusivity provision, or did not file a complaint earlier. None of these facts is material to the conclusion that the exclusivity provision controverted Commission policy against resale restrictions from July 1985 until October 30, 1986, when DCTC finally allowed TRAC to resell both DCTC and Ameritech's services.

14. DCTC takes exception to the statement that any TRAC customer who preferred to remain on the Ameritech system after DCTC's system became operational could not do so and remain a customer of TRAC.[27] However, it was merely an *a priori* observation to note that the clear language of the exclusivity provision so provided. The *Order* never found, nor is it necessary to find, that TRAC actually "lost a number of customers at the time of that transition."[28] What damages, if any, TRAC may be able to establish in the court proceeding is not an issue referred to the Commission and, therefore, not before us. Accordingly, and contrary to DCTC's argument,[29] TRAC had no obligation in this proceeding to make a factual showing that it had sustained damages.

Moreover, even if this complaint proceeding had not been initiated as the result of a court order, a showing of damages is not a prerequisite to the filing of a complaint pursuant to Section 208 of the Act.[30]

IV. CONCLUSION

15. We conclude that the Bureau's *Order* correctly held that the exclusivity provision here at issue constituted an unwarranted restriction of TRAC's right to resell services of both cellular licensees in the Detroit market, was contrary to Commission policies concerning the provision and resale of cellular radio service, was unjust and unreasonable under Section 201(b) of the Act and unreasonably discriminatory under Section 202(a) of the Act.

V. ORDERING CLAUSES

16. ACCORDINGLY IT IS ORDERED that the Petition for Reconsideration filed on May 24, 1989, as supplemented on June 14, 1989, IS DENIED.

17. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order be mailed forthwith to the Honorable Julian Abele Cook, Jr., Judge, United States District Court for the Eastern District of Michigan.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Before us are DCTC's Petition for Reconsideration filed on May 24, 1989 (Petition); a Motion for Leave to File Supplement to Petition for Reconsideration, and Supplement to Petition for Reconsideration, filed by DCTC on June 14, 1989; an Opposition to Petition for Reconsideration, timely filed by TRAC on June 21, 1989 (Opposition); and DCTC's reply to such Opposition, timely filed on July 13, 1989 (Reply). The Motion for Leave to File Supplement to Petition for Reconsideration is hereby granted.

[2] *See* TRAC Communications, Inc. v. Detroit Cellular Telephone Co., 3 FCC Rcd 4864 (1988). A petition for declaratory ruling, subsequently filed by DCTC, raised similar issues and was consolidated into this proceeding. *Id.*

[3] Insofar as the exclusivity provision restricted resale of cellular services furnished over DCTC's own licensed facilities from July 1985 until October 30, 1986, the *Order* found that the provision contravened the Commission's procompetitive resale policies and thus was anticompetitive in effect. The *Order* did not conclude that the provision had an anticompetitive effect for the period before DCTC's system became operational because TRAC could have dealt directly with Ameritech rather than through DCTC, which itself was a reseller of Ameritech's service during that period. *Order*, 4 FCC Rcd at 3771.

[4] Petition at 9.

[5] *Id.* at 18.

[6] *Id.* at 9.

[7] *Id.* at 10 (referring to June 28, 1988 Affidavit of James E. Blake at 2).

[8] *Id.*

[9] *Id.*

[10] *Id.* at 9 (referring to June 28, 1988 Affidavit of Jerry A. Hausman).

[11] Reply at 7-8 (referring to testimony of Russell Kohlman and a deposition of Thomas M. Talty). *See* Petition at 13.

[12] Opposition at 3-4. Count II is an action for damages pursuant to Section 207 of the Act. TRAC notes that DCTC's preferred approach, *i.e.*, the notice and comment procedures inherent in a petition for declaratory ruling, ordinarily would not have led to development of the factual record that DCTC now claims was necessary. *Id.* at 5 n.4.

[13] *Id.* at 7. TRAC asserts that every fact now claimed by DCTC to require reconsideration of the *Order* actually relates to whether TRAC was injured by DCTC's violation of the Act and Commission policy, and to TRAC's damages, issues that are before the court and not before the Commission. *Id.* at 6.

[14] DCTC relies on an affidavit of Donald Buhle, a former employee of Ameritech, but made no claim that it was unable to obtain his statement before it filed its answer to TRAC's complaint.

[15] Opposition at 8.

[16] *Id.*

[17] *Id.* at 10-14.

[18] Petition at 19-20.

[19] Opposition at 15.

[20] Cellular Communications Systems, 86 FCC 2d 469 (1981), *modified on other grounds*, 89 FCC 2d 58 (1982), *further modified*, 90 FCC 2d 571 (1982), *appeal dismissed sub nom.* United States v. FCC, No. 82-1526 (D.C. Cir. Mar. 3, 1983) (*Cellular Report and Order*). *See also* Cellular Telephone Co., 3 FCC Rcd 6274, 6275 (1988).

[21] *Order*, 4 FCC Rcd at 3771 (footnotes omitted) (citing *Cellular Report and Order*, 86 FCC 2d at 511).

[22] *Detroit* SMSA *Limited Partnership*, Mimeo No. 5769 (Mob. Serv. Div. released July 16, 1985).

[23] *Flint Cellular Telephone Co.*, Mimeo No. 4760 (Com. Car. Bur. released May 28, 1986).

[24] The footnote, following a sentence in the text that says the carrier "contends," reads as follows: "Typically, the types of vertical restraints that have been recognized as benefiting intrabrand competition include terms in an agreement between the carrier and the reseller proposing uniformly exclusive relationships or terms proposing that a carrier's resellers adhere to a plan of territorial or customer restrictions." 3 FCC Rcd at 6274 and n.8.

[25] Petition at 9.

[26] *Id.* at 10. Although DCTC objects to the Bureau's finding that the exclusivity provision in issue had been imposed by DCTC on TRAC (Petition at 5 referring to *Order* at para. 1), examination of the record as a whole supports that conclusion. *See, e.g.*, Complaint at para. 8, Petition for Declaratory Ruling at para. 17 of Exh. C.

[27] Petition at 11 n.14 (referring to para. 13 of *Order*).

[28] Reply to DCTC's Answer at 13.

[29] Petition at 11.

[30] Section 208(a) of the Act provides, in pertinent part, that no complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Parts 2 and 25 of the Commission's Rules to Establish a Satellite and Terrestrial CD Quality Broadcasting Service — RM-7400

ORDER GRANTING EXTENSION OF TIME

Adopted: July 12, 1990; Released: July 13, 1990

By the Office of Engineering and Technology:

1. The National Association of Broadcasters (NAB) and the Aircraft Flight Test Radio Coordinating Council (AFTRCC) have requested extensions of time within which to file comments in the above-referenced proceeding. Satellite CD Radio, Inc. filed its petition for rule making on May 18, 1990, and it was placed on public notice on June 18, 1990. The comment and reply comment dates were set for July 19 and August 6, 1990, respectively. Subsequently, on June 22, 1990, Satellite CD Radio filed a Supplement to the Petition; it was placed on public notice on June 9, 1990.

2. AFTRCC requests a 3-week extension of time and NAB seeks a 60-day extension. AFTRCC and NAB note that additional time is required in view of the complexity and critical nature of the proposal. AFTRCC adds that as the Supplement lays out additional particulars that are highly relevant to a thorough analysis of the proposal, more time is required to study the Supplement. Further, NAB indicates that it has recently formed a special Digital Audio Broadcasting Task Force to study this issue and contends that additional time is required for the the Task Force to formulate its views.

3. In view of the foregoing, we find that an extension of thirty days should be sufficient for all interested parties to study and prepare their responses to the Petition and Supplement and, thus, would be in the public interest. Therefore, we are extending the dates for comments and reply comments to *August 20, 1990*, and *September 4, 1990*, respectively.

4. This action is taken pursuant to authority found in Sections 4(i), 302, and 303 of the Communications Act of 1934 as amended, 47 U.S.C. Sections 154(i), 302, and 303, and pursuant to Sections 0.31 and 0.241 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Thomas P. Stanley
Chief Engineer

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 88-211

In re Applications of

J. T. PARKER BROADCASTING CORP. File No. BPH-861001TB

YEARY BROADCASTING, INC. File No. BPH-861001TC

For a Construction Permit for a New FM Station at Lebanon, Virginia

MEMORANDUM OPINION AND ORDER

Adopted: June 14, 1990; Released: July 25, 1990

By the Commission:

1. Now before the Commission is an application for review by J. T. Parker Broadcasting Corp. (Parker) of a decision of the Review Board in this case, 4 FCC Rcd 7764 (1989), and an opposition by Yeary Broadcasting, Inc.[1] The Board denied Parker's application and granted Yeary's competing application for a permit for a new FM station in Lebanon, Virginia, on the grounds that Yeary was clearly to be preferred under both the diversification and the integration factors of the Commission's comparative broadcast criteria. *Id.* at 7766 ¶¶ 13 and 14. We agree with the Board's determination in this case. However, one matter warrants further comment.

2. Parker owns daytime-only AM Station WLRV, which is already licensed to Lebanon, Virginia. Parker proffered a pledge to divest itself of WLRV should the Commission grant its instant application, but the ALJ refused to credit the pledge because Parker had been tardy in submitting it. Parker submitted the pledge on June 23, 1988, the date that the ALJ had set for the filing of integration and diversification statements. The ALJ noted that the B cut-off deadline to file a divestiture pledge, December 3, 1986, was long past by then. 4 FCC Rcd 5729, 5731 ¶ 26 (1989). The Board agreed with the ALJ's disposition of that matter. 4 FCC Rcd at 7765-66 ¶¶ 8-12. Parker argues that this holding is inconsistent with the Board's decision in *Metro Broadcasting, Inc.*, 99 FCC 2d 688, (Rev. Bd. 1984), rev. denied, FCC 85-558 (1985), which recognized integration proposals submitted after the B cut-off date because the application form did not expressly call for an applicant's complete integration proposal. *Id.* at 701 n.8(c). Parker maintains that there is no valid reason in law or logic for distinguishing in this regard between integration and divestiture proposals.

3. At the outset, we note that there were two parallel, but independent, avenues by which Parker could have avoided the impact of its ownership of WLRV in this proceeding. One of those avenues involved the making of a divestiture pledge in connection with the assertion of a daytimer preference within 30 days after the designation of this proceeding for hearing.[2] However, Parker concedes that it failed to comply with the deadline for a divestiture pledge under the daytimer preference procedure. The second and more typical avenue for avoiding the impact of Parker's ownership of WLRV would have been to file a divestiture pledge by the B cut-off date for this proceeding, which was the deadline for actions involving comparative upgrading of the applicant's proposals. [3]

4. Parker's argument that the deadline for submission of a divestiture pledge in this case should be extended in light of *Metro Broadcasting, supra*, to the date set by the ALJ for submission of the applicants' integration and diversification statements is without merit. In accordance with the Commission's long-standing policy against comparative upgrading which is intended to eliminate any unfairness in the comparative processs, applicants are judged by reference to the information in their applications as of the B cut-off date.[4] Of course, the B cut-off deadline can have no applicability when the information concerning an applicant's comparative qualifications is not required to be reported in the application form, as was the case in *Metro Broadcasting*.[5] Although it is true, as Parker urges, that the application form did not call for the disclosure of plans for divestiture, it specifically required all applicants to provide information concerning other media interests, such as Parker's AM station. Given the explicit requirement of the application form concerning the need to report media interests held by applicants and the result intended to be accomplished by its untimely divestiture pledge, Parker's effort to avoid the impact of its ownership of the AM station was properly rejected by the ALJ and the Board on the ground that it would have constituted an impermissible comparative upgrading.

5. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 1.115(g) the application for review filed by J. T. Parker Broadcasting Corp. on November 29, 1989 IS DENIED and the Motion to Reopen the Record filed by Yeary Broadcasting, Inc. on April 2, 1990 IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Yeary also filed a contingent Motion to Reopen the Record and Remand for Further Evidence Concerning J. T. Parker Broadcasting Corp.'s Violation of the Ex Parte Rules on April 2, 1990; Parker filed an Opposition on April 16, 1990; and Yeary filed a Reply on April 26, 1990. In light of our disposition of this case, Yeary's Motion will be dismissed as moot.

[2] *See Second Report and Order (Implementation of BC Docket No. 80 - 90 to Increase the Availability of FM Broadcast Assignments)*, 101 FCC 2d 638 (1985), on reconsideration, 59 RR 2d 1221 (1986), further recon. denied, 2 FCC Rcd 481 (1987), aff'd sub nom. *National Black Media Coalition v. FCC*, 822 F.2d 277

(2d Cir. 1987), where the Commission declared that it would award special comparative credit to daytime-only licensees applying for new FM channels in their communities of license, provided, among other things, that they had made a timely pledge to divest their daytime-only AM stations.

[3] This second procedure is applicable whether or not the divestiture pledge involves a daytime-only station.

[4] As set forth above, all applicants have an opportunity to make a divestiture pledge through the B cut-off date. In the case of an owner of a daytime only AM station in the same community, there is a further opportunity, until 30 days after designation for hearing, to make a divestiture pledge. However, Parker concedes that it failed to comply with the daytimer requirements. Thus it is subject to the traditional considerations of fairness pertinent for applicants proposing to use the B cut-off date avenue for avoiding a diversification demerit.

[5] The dispositive issue in *Metro Broadcasting* involved the applicants' integration proposals. When the Commission revised the application form in 1989, it conformed the information requirements concerning the integration and diversification criteria. 4 FCC Rcd 3853, 3860 ¶ 55 (1989).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of the Aviation Services Rules (Part 87) to make an additional frequency available to aeronautical utility mobile stations at airports with a control tower.

ORDER

Adopted: April 27, 1990; Released: July 25, 1990

By the Commission:

1. Aeronautical utility mobile stations located at airports with a control tower or control tower remote communications outlet (RCO) provide communications between the control tower and vehicles operating on airport movement areas such as runways, taxiways and other areas used for taxiing, take-off and landing aircraft. *See* 47 C.F.R. § 87.345. The types of vehicles normally equipped with aeronautical utility mobile stations include airport rescue and fire fighting vehicles, snow removal vehicles and airport maintenance vehicles. At these airports, the frequency assigned to aeronautical utility mobile stations is the frequency used by the control tower or RCO for ground traffic control (ground control frequency). *See* 47 C.F.R. § 87.349.

2. The Federal Aviation Administration (FAA) requests that we permit aeronautical utility stations located at airports served by a control tower to use the local control (tower) frequency as well as the ground control frequency. Further, the FAA asks that the Commission only grant an aeronautical utility mobile station application for assignment of the tower frequency when it is accompanied by a copy of a memorandum of agreement between the applicant and the Air Traffic Manager of the airport control tower approving the requested use of the tower frequency.[1]

3. The FAA states that a number of instances have occurred where a vehicle and an aircraft have inadvertently been cleared to operate on the same runway. The FAA indicates that authorizing aeronautical utility mobile stations to use the tower frequency when they are operating in the vicinity of active runways would help avoid inadvertent runway incursions. The flexibility for the aeronautical utility mobile station to be able to shift to the tower frequency, the FAA points out, would permit the vehicle operators and pilots to communicate on the same frequency and avoid the need for coordination between the tower and ground controllers. Further, the FAA notes that requiring applicants for assignment of the tower frequency to have the written approval of the airport Air Traffic Manager would alleviate the potential for abuse.

4. We conclude that it is in the public interest to amend the Aviation Services Rules as requested by the FAA. These amendments will support the FAA's effort to improve safety at airports with a control tower or an RCO by providing aeronautical utility mobile stations the flexibility to operate on the control tower frequency as well as the airport ground control frequency. The resulting improved communications capability will help the FAA prevent inadvertent conflicts between aircraft and vehicles operating in the vicinity of an active runway. Further, as requested by the FAA, applications for the assignment of an airport tower or RCO frequency will be granted for aeronautical utility mobile stations only when they are accompanied by a copy of the written approval of the airport Air Traffic Manager. This safeguard will enable the Air Traffic Manager to ensure that only vehicles with legitimate needs to operate in the vicinity of an active runway will be equipped with aeronautical utility mobile stations capable of using the tower or RCO frequency. Accordingly, we are amending Sections 87.347 and 87.349 of the Commission's Rules, 47 C.F.R. §§ 87.347 and 87.349, to make the tower frequency available to aeronautical utility mobile stations at airports with a control tower or RCO.

5. This amendment has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501-3520 and found to impose no new or modified form, information collection and/or record keeping, labeling, disclosure, or retention requirements; and will not increase or decrease burden hours imposed on the public.

6. This rule amendment provides for the use of the control tower or RCO frequency by vehicles operating on airport movement areas. The airport Air Traffic Manager must approve such use prior to the grant of a license. The decision to allow aeronautical utility mobile stations to communicate with the control tower via the tower frequency is voluntary and the frequencies will be assigned from the frequency blocks currently available for air traffic control purposes. The change is non-controversial and therefore constitutes a minor amendment to the rules in which the public is not likely to be interested. Therefore, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. § 553(b)(3)(B). In addition, because this amendment will promote increased safety in the aviation service, we find good cause to amend the rules effective immediately. Therefore, this rule amendment will be effective upon publication in the Federal Register. *See* 5 U.S.C. § 553(d).

7. Accordingly, IT IS ORDERED that under the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), Part 87 of the Commission's Rules, 47 C.F.R. Part 87, IS AMENDED as set forth in the Appendix below, effective upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

Part 87 of Chapter I Title 47 of the Code of Federal Regulations is amended as follows:

A. Part 87 - AVIATION SERVICES.

1. The authority citation for Part 87 continues to read as follows:

AUTHORITY: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-156, 301-609.

2. Section 87.347 is amended by adding a new paragraph (c) to read as follows:

§ 87.347 Supplemental eligibility.

* * * * *

(c) An applicant for an aeronautical utility station requesting authority to transmit on the local control (tower) frequency or on the control tower remote communications outlet (RCO) frequency must attach a copy of a memorandum of agreement between the applicant and the Air Traffic Manager of the airport control tower that approves the requested use of the tower or RCO frequency.

3. Section 87.349 is amended by revising paragraph (a) to read as follows:

§ 87.349 Frequencies.

(a) The frequency assigned to an aeronautical utility station at an airport served by a control tower, RCO or FAA flight service station is the frequency used by the control tower for ground traffic control or by the flight service station for communications with vehicles. In addition to the ground control frequency, an aeronautical utility station at an airport served by a control tower or RCO may be assigned the tower or RCO frequency if the assignment is specifically approved by the FAA as provided for in Section 87.347(c). The frequencies assigned are normally from the band 121.600-121.925 MHz.

* * * * *

FOOTNOTE

[1] *See* correspondence from Mr. Bob Powell, Spectrum Engineering Division, FAA, to Mr. Bob Mickley, FCC, dated July 11, 1989.

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 89-113

In the Matter of

Amendment of Section 94.65(e) RM-6205
of the Commission's Rules to
Rechannelize the 2450-2483.5 MHz Band.

REPORT AND ORDER

Adopted: July 9, 1990; Released: July 25, 1990

By the Commission:

I. INTRODUCTION

1. On May 25, 1989, we released a *Notice of Proposed Rule Making (Notice)* [1] to amend Part 94 of the Commission's Rules by channelizing the 2450-2483.5 MHz frequency band into twenty-six channels with each channel having a 625 kHz bandwidth and a 17.25 MHz transmit/receive frequency spacing. The *Notice* also proposed to permit up to four adjacent channels to be "stacked" to facilitate wideband digital microwave operations. These proposals were made to further the more efficient use of the band. On the basis of the comments submitted in response to the *Notice*, we find it in the public interest to adopt our proposals.[2]

II. BACKGROUND

2. Prior to 1985, Part 94 licensees had access to a frequency band that extended from 2450-2500 MHz. This band contained thirty channel pairs with each channel having a 800 kHz bandwidth and a separation between transmit and receive frequencies of 24.4 MHz. At that time the major use of this band was for fixed two-way duplex voice and data systems to support petroleum drilling operations. In 1985, the 2483.5-2500 MHz portion of the band was reallocated to the newly created Radiodetermination Satellite Service (RDSS), [3] leaving only the 2450-2483.5 MHz (hereafter called 2.4 GHz) portion available to new Part 94 applicants. This action eliminated the upper frequency of twenty-one of the thirty available channel pairs in the 2450-2500 MHz band, making them unusable for two-way duplex operation, which is the predominant use of the band. The Commission recognized the reallocation decision's impact on channelization in the 2.4 GHz band and stated that a future rule making would be initiated to address this issue.[4] A Petition for Rule Making (Petition) requesting rechannelization of the 2.4 GHz band was subsequently filed by Harris.[5]

III. ISSUES/DISCUSSION

3. The development of an effective channel plan for two-way operations involves the selection of a channel bandwidth and a spacing between transmit and receive frequencies that will create the maximum number of channels to meet the operational requirements of systems utilizing the frequencies and, at the same time, minimize the amount of unused spectrum in the band.

4. *Channel Bandwidth*. In its Petition, Harris proposed that the 2.4 GHz band be reconfigured to provide nine channel pairs with a channel bandwidth of 1250 kHz. API, in comments on the Petition, suggested a modified plan that would permit bandwidths of 625, 1250, and 2500 kHz, thus providing channels to satisfy a range of bandwidth requirements. Recognizing the need for wider bandwidth channels to accommodate digital microwave systems, the *Notice* proposed a single channel bandwidth of 625 kHz with a provision to allow applicants to request up to four adjacent channels to obtain a maximum channel bandwidth of 2500 kHz.

5. All commenters on the *Notice* except Western agree with our proposed 625 kHz channel bandwidth. Western asserts that changing the standard channel bandwidth to 625 kHz from the current 800 kHz would create more radio frequency (r.f.) channels, but would reduce the total information capacity of the band, thus reducing spectrum efficiency.[6] Harris replies that a 625 kHz channel bandwidth would maximize the number of available r.f. channels. Harris recognizes that while a 625 kHz channel plan may reduce the number of analog channels in theory, this would not necessarily be true in practice because many of the existing analog systems do not require an 800 kHz channel and can operate satisfactorily with a 625 kHz channel.[7] API replies that the public would benefit more from having a larger number of channels available.[8]

6. After weighing the benefits of creating a larger number of r.f. channels against the benefits of establishing fewer channels with larger bandwidths, we believe that a 625 kHz channel bandwidth, coupled with a channel stacking provision, is in the public interest because it maximizes the number of available channels and the stacking provision accommodates the need for wider bandwidths for efficient digital transmission. Also, because many existing users do not utilize the full capacity of an 800 kHz channel, the availability of a 625 kHz channel will satisfy their requirements. This approach will result in more available channels and in increased spectrum usage. We therefore are adopting a channel plan based upon a 625 kHz channel bandwidth.

7. *Transmit / Receive Frequency Spacing*. Harris in its Petition suggested a channel plan with a 22 MHz spacing between paired transmit and receive frequencies. One of the major goals in this proceeding has been to develop a channel plan that will maximize the number of paired channels and minimize the amount of unpaired spectrum in the band. Thus, to maximize the usage of the 2.4 GHz band, the *Notice* proposed to establish a transmit/receive frequency spacing of 17.25 MHz. This spacing would result in only 1 MHz of spectrum in the band that could not be paired for use in duplex operations. The *Notice* also asked for comments on how a 17.25 MHz transmit/receive frequency spacing might affect equipment cost and availability.

8. Commenters uniformly support our proposal to adopt a 17.25 MHz transmit/receive frequency spacing with the exception of Western, which recommends a 19

MHz spacing. Western states that a 17.25 MHz spacing will require more costly duplexers to suppress potential interference between transmit and receive frequencies.[9] Harris supports the 17.25 MHz spacing but agrees with Western that increased equipment costs may result due to additional filtering needed to permit narrower frequency spacing.[10] In its reply comments, however, Harris qualifies its concerns by indicating that a spacing wider than 17.25 MHz may be desirable, but is not necessary. Harris further states that equipment cost increases would in all likelihood not be substantial and the problem Western identifies could, in any case, be overcome by proper selection of equipment technical parameters such as selecting a different receiver intermediate frequency.[11] API agrees with Harris that a reduction of transmit/receive frequency separation to 17.25 MHz will not significantly increase the cost of equipment and therefore is both desirable and acceptable.[12] Based on our review of the comments, we conclude that the benefits of a 17.25 MHz transmit/receive frequency spacing outweigh the concerns about increased equipment costs.[13] We therefore are adopting a channel plan based upon a 17.25 MHz spacing between transmit and receive frequencies.

9. *Channel Stacking for Wider Bandwidths.* In its Petition, Harris also proposed that four channel pairs be designated a bandwidth of 2500 kHz, for authorization on a case-by-case basis, to accommodate the wider channel bandwidth needs of digital microwave communications systems. API, in its comments on the Petition, suggested that the Commission permit bandwidths of 625, 1250, and 2500 kHz to allow for varying bandwidth requirements. Recognizing the need of some applicants for wider channels, the *Notice* proposed that applicants could request up to four adjacent channels for an authorized maximum bandwidth of 2500 kHz. The *Notice* also asked if another maximum level of channel stacking, other than four channels, would be appropriate. The comments favored our proposal to permit stacking of up to four channels to obtain a wider channel bandwidth, thus accommodating increased use of digital technology in the band. We therefore are adopting our proposal that when a channel bandwidth wider than 625 kHz is needed, an applicant will be permitted to apply for up to four adjacent channels but will be required to submit justification for the requested wider bandwidth.

10. Thus, the channel bandwidth and transmit/receive frequency spacing parameters that we adopt in this Report and Order result in a channel plan that maximizes the use of the 2.4 GHz band by creating twenty six-channel pairs with 1 MHz of remaining unpaired spectrum.

11. *Use of the Remaining 1 MHz of Unpaired Spectrum.* The *Notice* did not propose any specific use of this 1 MHz of spectrum but asked for comments as to the most efficient use of any unpaired spectrum remaining in this band. No comments were received in response to this request.

12. Frequencies in this band are typically used for paired duplex operation. The remaining 1 MHz of spectrum cannot be paired with other in-band frequencies, thus its only apparent use would be for single-frequency simplex operation. It is unlikely that traditional users of this band would have an interest in establishing single-frequency simplex systems because their needs are for two-way duplex systems for multi-channel voice and data operations. We will therefore retain the remaining 1 MHz as an unchannelized band between transmit and receive frequencies. Any proposed use of frequencies in this 1 MHz band for fixed operations will be considered on a case-by-case basis and will be subject to the existing Part 94 technical standards for the 2450-2500 MHz band, with the exception of channel bandwidth requirements.

13. *Grandfathering and Sunset Considerations.* In its response to the Petition, API noted that a change in a transmit/receive frequency separation would render existing equipment obsolete and proposed grandfathering in perpetuity all systems licensed under the previous channelization scheme.[14] API further stated that many Petroleum Radio Service operations in the 2.4 GHz band are of a temporary-fixed nature, with equipment being moved from one location to another as drilling operations require.[15] Any decision to require compliance with revised channelization standards may preclude such movement unless the rules permitted the relocating of grandfathered equipment.[16]

14. We generally agreed with API's position on the grandfathering of existing stations and proposed that a temporary-fixed station using grandfathered equipment should be allowed to relocate to new operating locations within its authorized area of operation. While the *Notice* did not propose specific grandfathering provisions, comments were requested on whether it would be appropriate to "sunset" grandfathered systems by establishing a date after which all equipment and systems must comply with the new rules. We suggested that if a sunset period were adopted, five years would be an adequate time frame.

15. In its Comments, API reiterates its support for grandfathering existing stations but opposes any sunset provision. API states that requiring grandfathered licensees to modify their systems at the conclusion of a sunset period would defeat the purpose of grandfathering the system in the first place by requiring them to expend significant sums of money to modify systems already in place without any corresponding public benefit.[17] Western supports grandfathering and indicates that a sunset is not necessary if 800 kHz channels are retained.[18] Harris supports the grandfathering of existing equipment and also indicates that the grandfathering period should be indefinite without a sunset date.[19] The commenters assert that systems previously authorized to operate in the 2.4 GHz band should be permitted to continue to use their existing 800 kHz channel equipment for temporary-fixed operations within their authorized area of operation. They state that the 2450-2500 MHz band is one of the few bands where temporary-fixed operations are permitted, that temporary-fixed operations are needed, and that grandfathering of existing systems will avoid unnecessary investment in new equipment.

16. The action taken in the *Report and Order* of the RDSS proceeding grandfathered indefinitely stations operating on twenty-one of the thirty channels in the 2400-2500 MHz band.[20] The issue before us now is the grandfathering of systems operating on the nine remaining 800 kHz channels in the band.

17. The channeling plan being adopted has twenty-six 625 kHz channels. Fourteen of these channels occupy the same spectrum as the above-mentioned nine 800 kHz channels. If licensees of the nine 800 kHz channels were required to change equipment to conform to the new 625 kHz channeling plan, at best, on a one-for-one channel replacement basis, five new channels would be gained. However, each licensee could need two 625 kHz channels, or a 1250 kHz channel, to replace one 800 kHz channel.

At worst, replacing the nine 800 kHz channels could then require eighteen 625 kHz channels which would be more than a 50 percent increase in authorized spectrum to satisfy the same existing requirements. Any additional channels gained by reducing the standard channel bandwidth could therefore be negated if existing licensees were not grandfathered. Balancing the gains (or losses) in channel availability against the cost to a licensee of equipment replacement, we find no public benefit in requiring existing 800 kHz channel systems to convert to 625 kHz channels. We therefore are adopting a rule that permits both fixed and temporary-fixed stations in this band authorized before the effective date of the new rules to continue operating with existing equipment. Though grandfathered indefinitely, a license modification will still be required for a change in fixed system location or temporary-fixed system area of operation.

18. *Wideband Contingency Channel.* Harris requested in its Petition that one dedicated 10 MHz wide channel be established in the 2.4 GHz band for emergency restoration, maintenance bypass, and other temporary-fixed purposes.[21] The *Notice* did not propose to establish a contingency channel in this band, but solicited comments on the need for such a channel.

19. Harris maintains that a contingency channel preferably operating on a non-interference basis is needed, stating that although the current 800 kHz channeling plan in Section 94.65(e) permits one 8 MHz wideband channel, this channel bandwidth became obsolete when the Commission changed the authorized bandwidths to 5 and 10 MHz in the 1.8 GHz and 6.5 GHz bands. Harris further states that the failure to update the wideband provision of Section 94.65(e) is apparently attributable to an inadvertent oversight rather than a policy decision to the effect that there is no longer a need for a wideband channel in the 2.4 GHz band. Unless the basis for the current rule provision is no longer valid, Harris asserts that the Commission must provide for a 10 MHz channel as part of the revised channeling for this band.[22] AAR comments that there is a 10 MHz contingency channel currently available only in the 6.5 GHz band and a need therefore exists for a similar channel in the 2.4 GHz band.[23]

20. API opposes a contingency channel stating that the wide bandwidth required would add to the interference problems experienced from temporary-fixed operations in the band, and that there is no need for such a channel because there is a 10 MHz contingency channel available in the 6.5 GHz band.[24] API further states that a 10 MHz contingency channel may be useful in certain bands, but that the 2.4 GHz band is not an appropriate place for such a channel. API also notes that two 10 MHz contingency channels in this band, as proposed by Harris, would render about 60% of the band useless in a particular area at any one time and would thus be incompatible with the regular temporary-fixed operations permitted in the band.[25]

21. After review of the comments on this issue, we will not provide a 10 MHz wide contingency channel in the 2.4 GHz band. We concur with API that use of such a channel would have a potential for interference to a significant number of temporary-fixed licensees on the regular 625 kHz channels. The temporary-fixed status of this band reduces the information available to the public as to the precise operating locations of existing stations.[26] Licensees wishing to operate on the contingency channel would never be entirely sure that their operations would not interfere with other 2.4 GHz stations in the area. Because the interference potential of a wideband channel outweighs the apparent benefits that such a channel will provide, we are not implementing a contingency channel in the 2.4 GHz band.

IV. CONCLUSION

22. Upon consideration of the comments, we find it in the public interest to amend Section 94.65(e) of the Rules to rechannelize the 2.4 GHz frequency band. We adopt rules, as set forth in the Appendix, that contain a channeling plan consisting of twenty-six 625 kHz wide channels that have a 17.25 MHz separation between the transmit and receive frequencies. Applicants may be authorized up to four adjacent channels upon justification for the wider bandwidth. This action increases the number of available channel pairs and will facilitate the use of digital technology in this band. Systems authorized to operate in the 2.4 GHz band prior to the rules adopted in this proceeding may continue to operate under the rules in existence at the time of authorization.

V. FINAL REGULATORY FLEXIBILITY ANALYSIS

Need and purpose of this action:

23. The Commission is adopting this *Report and Order* to rechannelize the 2.4 GHz frequency band. This action will permit greater use of this spectrum and enhance the use of digital technology in this frequency band.

Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

24. No comments were received that addressed our Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected:

25. None.

VI. PAPERWORK REDUCTION ACT STATEMENT

26. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

VII. ORDERING CLAUSES

27. Accordingly, IT IS ORDERED that, pursuant to Sections 4(e) and 302(r) of the Communications Act of 1934, as amended, Part 94 of the Commission's Rules are AMENDED as set forth in the Appendix.

28. IT IS FURTHER ORDERED that this *Report and Order* will be effective **September 10, 1990.**

29. IT IS FURTHER ORDERED that this proceeding is TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX

47 C.F.R. Part 94 is amended as follows:

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U. S. C. 154, 303, unless otherwise noted.

2. 47 C.F.R. § 94.65 is amended by revising paragraph (e) to read as follows:

§ 94.65 Frequencies.

* * * * *

(e) 2450-2500 MHz:

(1) This band is shared with other communications services and is not subject to protection from interference from industrial, scientific, and medical devices operating on 2450 MHz.

(2) Stations licensed in this band under this Part prior to (effective date of rules) are grandfathered and may continue their authorized operations. Stations licensed in the 2483.5-2500 MHz portion of the band as of July 25, 1985, or on a subsequent date as a result of submitting an application on or before July 25, 1985, are grandfathered, and may continue operations, subject only to license renewal, on a co-primary basis with the Radiodetermination Satellite Service.

(3) 625 kHz bandwidth channels. The normal bandwidth authorized will be 625 kHz. Upon adequate justification, additional contiguous channels may be authorized to provide up to a 2500 kHz bandwidth.

PAIRED FREQUENCIES (MHZ)

Transmit (or receive)	Receive (or transmit)
2450.3125	2467.5625
2450.9375	2468.1875
2451.5625	2468.8125
2452.1875	2469.4375
2452.8125	2470.0625
2453.4375	2470.6875
2454.0625	2471.3125
2454.6875	2471.9375
2455.3125	2472.5625
2455.9375	2473.1875
2456.5625	2473.8125
2457.1875	2474.4375
2457.8125	2475.0625
2458.4375	2475.6875
2459.0625	2476.3125
2459.6875	2476.9375
2460.3125	2477.5625
2460.9375	2478.1875
2461.5625	2478.8125
2462.1875	2479.4375
2462.8125	2480.0625
2463.4375	2480.6875
2464.0625	2481.3125
2464.6875	2481.9375
2465.3125	2482.5625
2465.9375	2483.1875

The 2466.25-2467.25 MHz portion of this band is an unchanneled band between paired transmit and receive frequencies. Use of frequencies in this band with up to 1 MHz authorized bandwidth will be considered on a case-by-case basis and will be subject to the technical standards for the 2450-2500 MHz band as outlined in this Part. Authorizations will be made on a secondary basis only.

* * * * *

3. 47 C.F.R. § 94.71(b) is amended by replacing the entry in the frequency table for the 2450-2500 MHz band with entries for the 2450-2483.5 and 2483.5-2500 MHz bands, and revising footnote 2 in the table to read as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) * * *

Frequency band MHz	Maximum authorized bandwidth
* * * * *	
2450-2483.5	625 kHz[2]
2483.5-2500	800 kHz
* * * * *	

[2] 1250 kHz, 1875 kHz, or 2500 kHz on a case-by-case basis.

* * * * *

FOOTNOTES

[1] Notice of Proposed Rule Making, PR Docket No. 89-113, 4 FCC Rcd 4529 (1989).

[2] Comments were filed by the Harris Corporation - Farinon Division (Harris), Aerospace and Flight Testing Radio Coordinating Council (Aero), American Petroleum Institute (API), Western Multiplex Corporation (Western), Utilities Telecommunications Council (UTC), and the Association of American Railroads (AAR). Reply comments were filed by Harris and API.

[3] Report and Order, Gen. Docket No. 84-689, 58 RR 2d 1416 (1985).

[4] *Id.* at paragraph 21.

[5] Petition for Rule Making, RM-6205, filed on December 10, 1987, by the Harris Corporation - Farinon Division.

[6] Western states that for analog applications, one 800 kHz r.f. channel can support up to sixty channels of frequency division multiplex all-voice traffic, or up to thirty-six channels loaded 100% with data traffic. Reduction to a 625 kHz bandwidth would limit the capacity of one r.f. channel to thirty-six voice channels (forty-eight with degraded performance) or twenty-four data channels. Western comments at paragraph 1.

[7] Harris Reply Comments at 3.

[8] API Reply Comments at 9.

[9] Western Comments at 2.

[10] Harris Comments at 3.

[11] Harris Reply Comments at 5.

[12] API Comments at footnote 3.

[13] The *Notice* specifically indicated at paragraph 12 that we would consider an adjustment in the frequency separation if the proposed 17.25 MHz standard imposed severe hardships, that equipment costs are only one issue, and that consideration must also be given to spectrum efficiency.

[14] API Statement at 9.

[15] Temporary-fixed stations are licensed for an area of operation rather than a specific transmitter site, and normally stay at one location for approximately six months to one year. For example, a licensee could receive authority to operate anywhere within a county or even a state. The operational characteristics of temporary-fixed stations are similar to those of permanent-fixed stations. Licensees are also required to apply for a Special Temporary Authority or a modification of license to change the area of operation.

[16] API Statement at 10.

[17] API Comments at 7.

[18] Western Comments at paragraph 2.

[19] Harris Comments at footnote 2.

[20] *See* supra.

[21] A 10 MHz wide contingency channel in the 2.4 GHz band would be used temporarily by licensees of wideband channels in the 2.4 and 1.8 GHz (1850-1990 MHz) bands. Currently, such a contingency channel is available only in the 6.5 GHz (6525-6875 MHz) band pursuant to Section 94.65(g)(4) where the frequency pair 6535/6575 MHz is designated exclusively for that purpose. *See* Petition at 6 and Harris Reply Comments to UTC and API Comments on the Petition at 4.

[22] Harris modified its request for one contingency channel and recommended designating the frequency pairs 2455.3125/2472.5625 and 2460.9375/2478.1825 MHz as center frequencies for two 10 MHz wide contingency channels. Harris Comments at 4 and 5, and Reply Comments at 6.

[23] AAR Comments at 3.

[24] API Comments at 8 and 9.

[25] API Reply Comments at 4 and 5.

[26] Temporary-fixed stations are permitted to operate anywhere within a specified authorized area. *See* 47 C.F.R. § 94.25(d).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Report No. DS-982 Released: July 16, 1990

LOW EARTH ORBIT SATELLITE APPLICATION ACCEPTABLE FOR FILING; CUT - OFF ESTABLISHED FOR ADDITIONAL APPLICATIONS

The Commission has found, upon initial review, that the following application filed by Starsys, Inc. (Starsys) for authority to construct a low earth orbit satellite system is acceptable for filing. The Commission reserves the right to return this application, however, if, upon further review, it is determined that it is defective or not in conformance with the Commission's rules, regulations and policies.

STARSYS, INC. **File No. 33-DSS-P-90(24)**

Application for authority to construct 24 small satellites that are intended to operate in inclined (between 50 and 60 degrees), non-geostationary, low earth orbits approximately 1300 kilometers above the earth. The system is intended to provide two-way data communications and position determination services to mobile and fixed users throughout the United States. To operate its system, Starsys proposes to use spread spectrum techniques in the following VHF band frequencies:

Earth-to-space: 148.0 to 149.0 MHz

Space-to-Earth: 137.0 to 138.0 MHz

In the event that a non-spread spectrum basis is selected by the Commission, Starsys proposes to use the 148-148.411 MHz band for uplink transmissions and the 137-137.509 MHz band for downlink transmissions. [Starsys filed a petition for Rule Making to allocate these frequencies to its proposed services on a "modified primary basis." *See* Public Notice Report No. 1817 (June 18, 1990), RM-7399.] Communications are to consist of messages up to thirty-two characters in either the send or receive directions. Longer messages of up to 100 characters may be sent in separate packets and are to be assembled into an integrated whole message in the user terminal logic circuitry. Position location information may also be sent via the "voice locator" service, which translates position information into human language. Starsys proposes to sell its services on a non-common carrier basis in bulk to providers of related products who will, in turn, make the services available to individual customers. Service is to be provided through low-cost, portable transceivers. Services proposed to be offered include emergency services, monitoring services, tracking services, messaging services, and interconnection with the public switched telephone network. Starsys states that all twenty-four satellites will be launched within four years after Commission authorization.

Comments or petitions regarding Starsys's application may be filed on or before **August 17, 1990.** Replies and oppositions may be filed on or before **September 3, 1990.** Responses may be filed on or before **September 21, 1990.**

Interested parties wishing to file applications for low earth orbit satellite systems to operate in the 148.0-149.0 MHz and 137.0-138.0 MHz bands to be considered concurrently with Starsys's and Orbital Communications Corporation's (*see* Public Notice DS-953, April 11, 1990) may do so on or before **September 21, 1990.** Each applicant must file a concrete, comprehensive proposal for its proposed low earth orbit satellite system, describing in detail all pertinent technical and operational aspects of the system, the proposed services (*e.g.*, fixed, mobile, data, voice), and its ability to proceed expeditiously with construction and launch. In particular, applicants shall provide all information specified in Appendix B of *Space Station Application Filing Procedures*, 48 Fed. Reg. 40256 (September 6, 1983), as appropriate. Applications that fail to comport with these requirements as of the cut-off date will be dismissed as unacceptable for filing. Applicants filing by the cut-off date will be afforded an opportunity to amend their applications, if necessary, to conform with any requirements and policies that may be adopted for a low-earth orbit satellite service in either the frequency allocation or licensing portions of this proceeding.

For further information, contact Fern Jarmulnek or Kathleen Campbell at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

ERRATUM

Released: July 25, 1990

Report No. DS-985

ERRATUM to Public Notice, Report No. DS-982 LOW EARTH ORBIT SATELLITE APPLICATION ACCEPTABLE FOR FILING; CUT-OFF ESTABLISHED FOR ADDITIONAL APPLICATIONS

The following corrections are made to Public Notice, Report No. DS-982 (released July 16, 1990):

Old Text: Replies and oppositions may be filed on or before **September 3, 1990.**

New Text: Replies and oppositions may be filed on or before **September 4, 1990.**

Old Text: Interested parties wishing to file applications for low earth orbit satellite systems to operate in the **148.0-149.0 MHz** and 137.0-138.0 MHz bands to be considered concurrently with Starsys's and Orbital Communications Corporation's (*see* Public Notice DS-953, April 11, 1990) may do so on or before September 21, 1990.

New Text: Interested parties wishing to file applications for low earth orbit satellite systems to operate in the **148.0-149.9 MHz** and 137.0-138.0 MHz bands to be considered concurrently with Starsys's and Orbital Communications Corporation's (*see* Public Notice DS-953, April 11, 1990) may do so on or before September 21, 1990.

For further information, contact Fern Jarmulnek or Kathleen Campbell at (202) 634-1624.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

LDDS COMMUNICATIONS, INC.,
Complainant,

v.

MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY,	File No. E-90-226
NORTHWESTERN BELL TELEPHONE COMPANY,	File No. E-90-227
PACIFIC NORTHWEST BELL TELEPHONE COMPANY	File No. E-90-228

Defendant

ORDER

Adopted: July 18, 1990; Released: July 25, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, LDDS Communications, Inc. (hereinafter "LDDS") filed with the Commission the above-captioned formal complaints against the Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (hereinafter the "Defendants") seeking recovery of damages for the Defendants' alleged overearnings on interstate access services for the period January 1, 1987 through December 31, 1988. On July 2, 1990, however, LDDS filed a motion for leave to withdraw the complaints, stating that the parties had entered into a formal resolution of LDDS' claims and that, as a consequence, there was no longer any necessity for these proceedings.

2. On the basis of the statements contained in the Motion, we conclude that the public interest would be served by granting LDDS' motion.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that LDDS' Motion for Leave to Withdraw Complaints IS GRANTED and that the above-captioned proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TELEDIAL AMERICA, INC.,
Complainant,

v. File No. E-90-261

MOUNTAIN STATES
TELEPHONE AND
TELEGRAPH
COMPANY
Defendant

ORDER

Adopted: July 19, 1990; Released: July 25, 1990

By the Chief, Enforcement Division, Common Carrier Bureau:

1. On May 18, 1990, TeleDial America, Inc. (hereinafter "TeleDial") filed with the Commission the above-captioned formal complaint against the Mountain States Telephone and Telegraph Company (hereinafter "Mountain States") seeking recovery of damages for Mountain States' alleged overearnings on interstate access services for the period January 1, 1987 through December 31, 1988. On July 6, 1990, however, TeleDial filed a motion for leave to withdraw the complaint, stating that the parties had entered into a formal resolution of TeleDial's claims herein and that, as a consequence, there was no longer any necessity for these proceedings.

2. On the basis of the statements contained in the Motion, we conclude that the public interest would be served by granting TeleDial's motion.

3. Accordingly, IT IS ORDERED, pursuant to authority delegated under 47 C.F.R. § 0.291, that TeleDial's Motion for Leave to Withdraw Complaint IS GRANTED and that the above-captioned proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Hess
Chief, Enforcement Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

TRT/FTC COMMUNICATIONS, INC. File No. I-T-C-90-092

Application for authority to acquire and operate facilities for direct service between the U.S. and Bangladesh

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 18, 1990; Released: July 25, 1990

By the Chief, International Facilities Division:

I. INTRODUCTION

1. The above-captioned application, filed on April 19, 1990, by TRT/FTC Communications, Inc. (TRT/FTC), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate facilities for direct service between the U.S. and Bangladesh and beyond. The application was placed on public notice on April 25, 1990. A Petition to Deny the Application was filed by Pan American Satellite (PAS) on May 25, 1990. TRT/FTC filed an Opposition to the Petition to Deny on June 7, 1990.

II. SUMMARY OF PLEADINGS

A. The TRT/FTC Application

2. TRT/FTC requests authority to lease and operate six telegraph half-circuits in bearer facilities between the U.S. and Bangladesh for the provision of direct service to Bangladesh. The facilities will be leased from the Western Union Telegraph Co. (WUT).

The PAS Petition to Deny

3. PAS opposes a grant of TRT/FTC's application at this time. According to PAS, France Telecom, which owns a 14.9 percent equity interest in TRT/FTC through various subsidiaries and holding companies, has refused to consider any INTELSAT consultation for the PAS separate satellite system beyond the one-way video consultation (United States to France) that was concluded earlier. PAS states that France Telecom refuses to expand the present scope of United States-France service via separate systems despite clear customer interest in transmissions (both data and video) to and from France. Since the instant application proposes expansion of TRT/FTC's operations within the United States, PAS asks that the application not be granted until France demonstrates that its telecommunications markets are open to all United States companies, including United States separate satellite systems. PAS observes that TRT/FTC has indicated that it will accept dominant carrier classification with respect to traffic to and from France upon completion of its proposed merger with FTC Communications, Inc. (FTCC).

The TRT/FTC Opposition

4. TRT/FTC states that PAS's arugments have already been rejected by the Commission several times and it does not feel that it should respond to the present repetitive Petition.

III. DISCUSSION

5. We would note at the outset that, as a result of the the recent corporate restructuring of the subsidiaries of International Communications Holdings, Inc., TRT/FTC was found to be subject to dominant carrier regulation with respect to its services to France. However, TRT/FTC is not deemed to be dominant with respect to the services it provides to any country other than France.

6. It must be observed that all of the precedent cited by PAS relates to Commission consideration of reciprocity concerns with respect to dominant foreign-owned carriers. As noted above, TRT/FTC is not considered to be dominant for the provision of services to any country other than France. Since the circuits requested by the subject application are for the provision of service to Bangladesh, we shall consider TRT/FTC as non-dominant for the purposes of this proceeding. However, we will limit TRT/FTC's authority to offer service "beyond" Bangladesh to exclude authority to use these circuits for service to France.

7. We find that, with the above limitation, grant of the subject application will service the public interest by making available the benefits of increased customer choice in the international services market. We disagree with PAS that grant of the instant TRT/FTC application should be withheld until the French government adopts policies more favorable to separate satellite systems. Although we are concerned with PAS' continued inability to gain further entry into the French market, PAS has not sufficiently demonstrated how denial or deferral of the instant application would serve the public interest.

8. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the acquisition of the requested facilities for the provision of direct service between the United States and Bangladesh by TRT/FTC.

9. Accordingly, IT IS ORDERED that applications File No. I-T-C-90-092 IS GRANTED, and TRT/FTC is authorized to:

a. lease from WUT and operate six telegraph grade (50 baud) half-circits in bearer facilities between the U.S. and Bangladesh; and

b. use the facilities in a above to provide TRT/FTC's regularly authorized services between the U.S. and Bangladesh and beyond with the exception of France.

10. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between

TRT/FTC and its correspondent in Bangledesh and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

11. The Petition to Deny filed by PAS is hereby DENIED.

12. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-90-093

Application for authority to lease and operate facilities for direct service between the U.S. and Sri Lanka

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 19, 1990; Released: July 25, 1990

By the Chief, International Facilities Division:

1. The above-captioned application, filed on April 20, 1990 by MCI Telecommunications Corp. (MCI), requests authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate facilities for the provision of direct service between the U.S. and Sri Lanka. The application was placed on public notice on April 25, 1990. No comments were received. Upon consideration of the application, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Sri Lanka by MCI.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-90-093 IS GRANTED, and MCI is authorized to:

a. lease from Comsat and operate six voice-grade satellite half-circuits between the Etam, West Virginia earth station and an appropriate satellite over the Atlantic Ocean Region, connecting with similar circuits between the satellite and an earth station in France, furnished by MCI's correspondent in Sri Lanka;

b. lease a one-half interest in and operate six voice-grade circuits between the earth station in France and the SEA-ME-WE cable terminal at Marseilles, France;

c. lease a one-half interest in and operate six voice-grade circuits between the SEA-ME-WE cableheads at Marseilles, France and Colombo, Sri Lanka[1];

d. lease from AT&T and operate six voice-grade circuits in the Etam, West Virginia earth station;

e. lease and operate six voice-grade circuits between the Etam, West Virginia earth station and MCI's West Orange, New Jersey operating center; and

f. use said facilities to provide MCI's regularly authorized services, including switched voice services, between the U.S. and Sri Lanka and beyond.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of an operating agreement between MCI and its correspondent in Sri Lanka, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

FOOTNOTE

[1] MCI states that its correspondents, Overseas Telecommunications Service (OTS) has agreed to provide at its sole expense, the matching half of the international satellite facilities, together with the connecting facilities within Sri Lanka.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI TELECOMMUNICATIONS CORPORATION — File No. I-T-C-90-095

Application for authority to lease and operate facilities for direct service between the U.S. and Saipan

Application for authority to lease and operate facilities for direct service between the U.S. and Indonesia. — File No. I-T-C-90-096

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: July 19, 1990; Released: July 25, 1990

By the Chief, International Facilities Division:

1. The above-captioned applications, filed on April 26, 1990 by MCI Telecommunications Corp. (MCI), request authority pursuant to Section 214 of the Communications Act of 1934, as amended, to lease and operate facilities for direct service between the U.S. and Saipan and Indonesia. The applications were placed on public notice on May 2, 1990. No comments were received. Upon consideration of the applications, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of direct service between the U.S. and Saipan and Indonesia by MCI.

2. Accordingly, IT IS ORDERED that applications File Nos. I-T-C-90-095 and I-T-C-90-096 ARE GRANTED, and MCI is authorized to:

a. lease from Comsat and operate 31 voice-grade satellite half-circuits between the Yacolt, Washington earth station and an appropriate satellite over the Pacific Ocean;

b. acquire and operate 31 voice-grade half-circuits in the Yacolt, Washington earth station;

c. acquire and operate 31 voice-grade circuits between the Yacolt, Washington earth station and MCI's Dominguez Hills, California operating center; and

d. use said facilities to provide MCI's regularly authorized services, including switched voice service, between the U.S. and the following points and beyond:

i. Saipan - seven voice-grade circuits;

ii. Indonesia - 24 voice-grade circuits.

3. The Commission retains jurisdiction over this matter to reallocate circuits in the satellite system among the various international common carriers and other authorized users as required to ensure nondiscriminatory use of, and equitable access to, the communications satellite system.

4. No material changes inconsistent with this or any other relevant Commission order shall be made before final execution of operating agreements between MCI and its correspondents in Saipan and Indonesia, and copies of the agreements shall be filed with the Commission within 30 days of their execution.

5. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 90-132

In the Matter of

Competition in the
Interstate Interexchange Marketplace

ORDER

Adopted: July 13, 1990; Released: July 16 1990

By the Chief, Common Carrier Bureau:

1. On July 9, 1990, the United States Department of Justice (DOJ) filed a motion seeking a thirty-day extension of the deadline for filing reply comments in this proceeding.[1] DOJ states that it needs additional time because of the importance and complexity of the issues presented, the volume of comments that were filed, and the conflicting demands placed on DOJ's limited resources by ongoing proceedings before the United States District Court for the District of Columbia concerning removal of the information services restriction imposed on the Bell Operating Companies by the Modification of Final Judgment.[2] No party filed comments on this motion.

2. Although it is the policy of the Commission that extensions of time shall not be routinely granted, [3] we believe, in light of the importance of the issues presented in this proceeding, that the public interest would be served by allowing DOJ the additional time it requests for filing reply comments. Therefore, we grant DOJ's motion and extend the date for filing reply comments for thirty days, until September 4, 1990.

3. Accordingly, IT IS ORDERED, pursuant to sections 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (j) and 155 (c), and authority delegated thereunder pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that the motion of DOJ for extension of time is GRANTED. The deadline for filing reply comments is extended to September 4, 1990.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] This proceeding was initiated by a Notice of Proposed Rule Making, released April 13, 1990. *See* Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 2627 (1990).

[2] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[3] *See* 47 C.F.R. §1.46(a).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-426

In re Applications of

SHAWN PHALEN	File No. BPH-851231MO
ELLWOOD BEACH BROADCASTING, LTD.	File No. BPH-851231MS
SPIRIT BROADCASTING	File No. BPH-860102MZ
JAMES EVANS	File No. BPH-851231MR
CLAUDIA BRATTON	File No. BPH-860102MX

For Construction Permit for New FM Broadcast Station at Montecito, California

MEMORANDUM OPINION AND ORDER

Adopted: July 13, 1990; Released: July 24, 1990

By the Review Board: MARINO (Chairman), and BLUMENTHAL.

1. In a *Supplemental Summary Decision* (*SSD*) in this proceeding, FCC 90D-14, released April 4, 1990, Administrative Law Judge Walter C. Miller (ALJ) concluded that Claudia Bratton was financially qualified to construct and operate her proposed station and that no genuine issue of material fact existed requiring a further hearing. Accordingly, the ALJ reinstated his original *Initial Decision* (*I. D.*), 4 FCC Rcd 5714 (1989), granted Bratton's application, and denied the competing applications. Exceptions have been filed by Spirit Broadcasting, Shawn Phalen, Ellwood Beach Broadcasting, Ltd., and James Evans; Bratton has filed a reply brief. For the reasons stated herein, we reverse and remand this proceeding to the ALJ for further hearing consistent with our previous rulings in this case. [1]

BACKGROUND

2. In *Shawn Phalen*, 5 FCC Rcd 53 (Rev. Bd. 1990) (*Phalen I*), the Board remanded this proceeding on a financial qualifications issue against Bratton. This action was premised on our analysis of evidence pertaining to a loan commitment relied upon by Bratton from the Bank of Montecito which raised serious questions as to whether the Bank had been provided sufficient information upon which to make even the most tentative commitment to finance the proposal, and whether Bratton could claim "reasonable assurance" of a loan. Thereafter, pursuant to a request for extraordinary relief filed by the four other applicants, the Board found it necessary to intervene in order to clarify our remand order and provide further direction to the ALJ regarding the scope of the intended hearing. *See Shawn Phalen*, 5 FCC Rcd 2622 (Rev. Bd. 1990) (*Phalen II*). In *Phalen II*, we stated in pertinent part as follows:

> Where the Board, as in this case, and the Commission have remanded proceedings on financial qualifications issues, we have done so on the understanding that the appropriate inquiry is whether at the time the applicant certified its financial qualifications it had reasonable assurance of the funds necessary to construct and operate its proposed facility. *See Opal Chadwell*, 4 FCC Rcd 1215 (1989); *Pepper Schultz*, 2 FCC Rcd 1476 (1987). Here, however, the ALJ has suggested in his *Further Prehearing Order*, *supra*, as well as in a just-issued *Memorandum Opinion and Order*, FCC 90M-618, released March 26, 1990, at para. 4, that the financial issue in this case "looks forward," which would preclude examination of Bratton's financial commitment at the time of her application. This is egregious error. In order to avoid a likely reversal of the ALJ's supplemental decision in this case and yet a further hearing *de novo*, *see WWOR - TV, Inc.*, 4 FCC Rcd 6155 (1989), we grant the petition insofar as we direct that the issue added herein be to determine whether Bratton had reasonable assurance of sufficient funds to construct and operate for three months *before* she certified her financial qualifications. *See Northampton Media Associates*, 4 FCC Rcd 5517 (1989).

Id., at 2622-2623 (footnotes omitted). In resolving the financial issue in Bratton's favor in the *SSD*, the ALJ permitted Bratton to simply amend her proposal to submit an entirely new financial plan which placed reliance on a loan from South Jersey Radio, Inc. of Linwood, New Jersey to meet her financial obligation. The ALJ opined that this new commitment obviated the concerns raised by the Board pertaining to the Bank of Montecito loan letter. *SSD* at paras. 8, 13. He did not, as per *Schultz* and *Chadwell*, seek to determine whether Bratton's original financial certification was *bona fide*.

DISCUSSION

3. The *SSD* on appeal herein was adopted March 27, 1990 and released publicly on April 4, 1990, whereas the Board's opinion in *Phalen II* was adopted between these two dates, on March 30, 1990, and published afterwards, on April 20, 1990. As a consequence of these vagaries, it appears that the ALJ acted prior to and without awareness of the Board's issuance of further instructions on the Bratton matter and that, in turn, the Board acted without knowledge of the ALJ's summary resolution of the financial issue. Unfortunately, therefore, vacation of the ALJ's supplemental decision and remand for yet a further hearing, which *Phalen II* was intended to avoid, has now become necessary. [2] In reaching this conclusion, we reject Bratton's contention that the Board is creating new law. [3] As we reiterated in *Aspen FM, Inc.*, 5 FCC Rcd 3196, 3198 (Rev. Bd. 1990):

> The conclusion that the financial issue is forward looking and does not depend on the applicant's financial condition "before" or "at the time" of certification is plain legal error and inconsistent with a long line of Commission and Board cases beginning in 1986 and continuing to the present.

This point had been underscored by the Commission in *Northampton Media Associates*, 4 FCC Rcd 5517, 5518 (1989), *recon. denied*, 5 FCC Rcd 3075 (1990):

> [A] broadcast applicant . . . must have reasonable assurance of having sufficient funds to construct the proposed station and operate it without revenue for three months *before* the applicant certifies its financial qualifications. In other words, the applicant may not certify its financial qualifications and then arrange financing.

Thus, unless Bratton can establish that she had the requisite "reasonable assurance" of financing when she so certified, the ALJ may not consider a "good cause" showing for a subsequent amendment to a new financial plan. *See Pepper Schultz*, 5 FCC Rcd 3273 (1990) (disqualified applicant did not have "viable . . . financial plan when he filed his application"; no "good cause", therefore, for permitting amendment). *See also Phalen II*, 5 FCC Rcd 2623, n.1; *cf. 62 Broadcasting, Inc.*, 4 FCC Rcd 1768, 1773 (Rev. Bd. 1989) (same with respect to transmitter site), *rev. denied*, 5 FCC Rcd 830 (1990). The case is remanded for hearing consistent with this opinion.

4. ACCORDINGLY, IT IS ORDERED, That the motion to dismiss and to terminate proceeding, filed May 9, 1990, the motion to vacate, filed April 4, 1990, and the motion to recuse, filed May 24, 1990, by Claudia Bratton ARE DENIED; and

5. IT IS FURTHER ORDERED, That the motion for leave to supplement exceptions filed July 6, 1990 by Ellwood Beach Broadcasting, Ltd. IS GRANTED, and the supplement IS ACCEPTED; and

6. IT IS FURTHER ORDERED, That this proceeding IS REMANDED to the Presiding Officer for adduction of additional evidence and preparation of a Supplemental Initial Decision in accordance with this opinion.

FEDERAL COMMUNICATIONS COMMISSION

Norman B. Blumenthal
Member, Review Board

FOOTNOTES

[1] We will deny Bratton's May 9, 1990 request that we dismiss the other applications and terminate the proceeding because the competing applicants did not file a notice of appeal pursuant to 47 C.F.R. 1.302(b). Under 47 C.F.R. 1.251(e), where a presiding officer issues a Summary Decision, as he did here, it is subject to appeal in the same manner as an Initial Decision under 47 C.F.R. 1.276 and 1.277; therefore, the requirements of 47 C.F.R. 1.302 are inapplicable. We will also deny Bratton's April 4, 1990 motion that we vacate our opinion in *Phalen II* (see para. 2, *infra)*. In essence, this is a request for reconsideration of an interlocutory ruling, which is an impermissible filing under 47 C.F.R. 1.291(a)(3).

[2] On May 24, 1990, Bratton filed a motion to recuse Board Chairman Marino and Board Member Blumenthal (who comprised the panel in *Phalen I* and *Phalen II)* from further participation in this proceeding. In support, Bratton argues that the Board prejudged the appeal of the *SSD* in *Phalen II*, that it unilaterally altered the Commission's financial standards in *Phalen I*, arbitrarily accepted an unauthorized appeal in *Phalen II*, has engaged in a personal dispute with the presiding ALJ dating back to 1985.

To begin with, Section 1.245(b), upon which Bratton relies for its motion, is inapplicable. That rule section pertains only to disqualification of presiding officers and does not by its terms refer to the Board. Nevertheless, assuming *arguendo* that a party may seek the Board's recusal on grounds of personal bias or other disqualification, we will address Bratton's motion on the merits according to the same standards that would apply to a motion to disqualify a presiding judge.

The Commission has recently held that in order to disqualify a presiding judge from an adjudicatory proceeding, "a party must demonstrate personal bias or prejudice impairing the presiding judge's ability to act in an impartial manner." *Catalina Radio*, FCC 90-218, released June 18, 1990, para. 4; *Webster - Fuller Communications Associates*, 4 FCC Rcd 4952, (1989). Furthermore, to be disqualifying, the alleged bias or prejudice "must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *Catalina Radio, supra*, citing *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966). Moreover, "[u]nfavorable interlocatory rulings by the ALJ during the hearing may be relevant to a claim of prejudice but, without further support, they will not afford a basis for disqualifying the ALJ." *Catalina Radio, supra*, para. 5, citing *Barnes Enterprises, Inc.*, 66 FCC 2d 499, 501-02 (1977).

In its opinions in *Phalen I* and *Phalen II*, the Board applied prevailing Commission law. The essence of *Phalen I* was that where serious questions are raised as to an applicant's alleged reliance on a bank letter, the Commission and Board have historically engaged in further inquiry to determine whether the requisite "reasonable assurance" is present. *See Christina Communications*, 2 FCC Rcd 1971, 1974 (1987); *Global Information Technologies, Inc., FCC 90R-40, released June 6, 1990; Rebecca L. Boedker*, 5 FCC Rcd 2855 (Rev. Bd. 1990). Similarly, *Phalen II* was intended not to prejudge appeal of the SSD, but to avoid further remand by providing clarification and guidance to the ALJ in accordance with the Commission's financial standards. *See Northampton Media Associates*, 4 FCC Rcd 5517 (1989); *Opal Chadwell*, 4 FCC Rcd 1215 (1989); *Pepper Schultz*, 2 FCC Rcd 1476 (1987). Furthermore, in accordance with Commission practice, *see Communications Satellite Corp.*, 32 FCC 2d 553 (1971), the appeal in *Phalen II* was granted only to the extent of correcting the ALJ's egregious error as to the scope of the remanded issue. Also, the passing reference at oral argument in this proceeding (Tr. 1146, lines 19-23) to Spirit counsel Eric S. Kravetz's former status as a Board staff attorney (nearly two decades ago) was in no way meant as a comment on counsel or his client's position. Nor has Bratton shown how criticism of the same ALJ contained in a single footnote to a Separate Statement (issued in an unrelated proceeding five years ago) establishes a predisposition in the present case unfavorable to

Bratton. At this point, the Board has merely added an issue. It stands ready, if necessary, to review objectively the ALJ's findings and conclusions based on the facts adduced thereunder.

In sum, we have stated our reasoning for the contested rulings in accordance with Commission law. *See Webster-Fuller, supra,* at 4952 ("A heavy burden of proof is placed on a party seeking to establish bias.")

[3] It is certainly not new law to inquire into whether a subject bank letter reflects actual "reasonable assurance" of a loan, particularly when the letter on its face raises substantial and material questions about the sufficiency of a commitment. *See, e.g., Multi-State Communications, Inc. v.* FCC, 590 F.2d 1117 (D.C. Cir. 1978) (Comm'n questions sufficiency of bank letter); accord *Las Vegas Valley Broadcasting Co. v. FCC,* 589 F.2d 594, 599-601 (D.C. Cir. 1978); *Chapman Radio & Television Co.;* 70 FCC 2d 2063, 2072 (1979); *Jay Sadow,* 39 FCC 2d 808, 809 (Rev. Bd. 1973). *Christina Communications,* 2 FCC Rcd 1971, 1974 (1987); *see generally also Global Information Technologies, Inc.,* FCC 90R-40, released June 6, 1990.

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
July 18, 1990

Release: July 19, 1990

George L. Lyon, Jr., Esquire
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Washington, D.C. 20006

Re: File No. E-90-110;
Bobier Electronics, Inc. v. Capitol
Radiotelephone Co.

Dear Mr. Lyon:

This letter responds to your June 6, 1990 letter, in which, on behalf of Bobier Electronics, Inc., you allege that Capitol Radiotelephone Co., Inc. (Capitol) made a prohibited *ex parte* presentation in connection with the above-referenced proceeding. Specifically, you allege that Capitol's filing of an FCC Form 489 notifying the Commission of completion of construction constituted a prohibited *ex parte* presentation in connection with your pending formal complaint that Capitol was operating without prior authorization. By letter dated June 18, 1990, Capitol denied that its filing of the Form 489 constituted a prohibited *ex parte* presentation.

The filing of a form authorized or required by the Commission's rules generally does not constitute a prohibited *ex parte* presentation.[1] *See* 47 C.F.R. § 1.1204(b)(1); *Daily Telegraph Printing Co.*, 59 FCC 2d 185, 194-95, *recon. denied*, 38 RR 2d 1545 (1976); *Rules Governing Ex Parte Communications in Hearing Proceedings*, 1 FCC 2d 49, 57 (1965). The Commission's rules require the filing of a Form 489 for additional transmitters in certain circumstances. 47 C.F.R. §§ 22.9, 22.117(b). Accordingly, we conclude that Capitol did not make a prohibited *ex parte* presentation.

Sincerely,

Andrew S. Fishel
Managing Director

FOOTNOTE

[1] Capitol's suggestion that Bureau processing staff do not constitute decision-making personnel is incorrect. *See* 47 C.F.R. § 1.1202(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company
Revisions to Tariff F.C.C. No. 12

Transmittal No. 2287

ORDER

Adopted: July 5, 1990; Released: July 6, 1990

By the Chief, Common Carrier Bureau:

1. This transmittal offers Virtual Telecommunications Network Service (VTNS) Option 47, by which the American Telephone and Telegraph Company (AT&T) will provide voice and data communications service between stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. Following substantially complete installation, the rates for Option 47 are stabilized throughout a three-year term. Transmittal 2287 at Section 7.49. The basic charge for VTNS under this option is $346,400 per month, with a minimum annual charge of $7,373,780. *Id.* at Sections 7.49.2.A, D. Also, a volume pricing plan applies to the total monthly charges depending upon the number of data transmission capability (DTC) network components. *Id.* at Section 7.49.2.F.

2. On May 25, 1990, US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject, or alternatively, to suspend and investigate the instant transmittal. AT&T filed a reply on June 4, 1990.

3. Sprint argues that AT&T has failed to demonstrate that Option 47 is an integrated service package that is "unlike" its other component services. Petition at 1-2. Moreover, Sprint contends, AT&T's filing of 49 separate VTNS offerings with similar rate structures makes clear that each such offering is designed for one customer. Additionally, Sprint maintains that various specifications in the transmittal also effectively restrict the offering to one customer. Therefore, Sprint asserts, the Commission should order AT&T to offer these rates under a generally available tariff, as in the case of the individual case basis (ICB) rates for the local exchange carriers' DS3 service. *Id.* at 2-4. Sprint also alleges that AT&T's cost support is "seriously deficient" and incorporates by reference the arguments it raised in its petitions against VTNS Options 17, 18, and 19, found in AT&T Transmittals 1810, 1826, and 1832, respectively. *Id.* at 4.

4. AT&T asserts that the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. Therefore, AT&T maintains, the rates in Option 47 are not unjustly discriminatory. Reply at 3-4. AT&T also states that the Commission has consistently found AT&T's costing systems sufficient to support AT&T's Tariff 12 filings. These methods, AT&T contends, satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 7-9.

5. The Common Carrier Bureau has reviewed AT&T Transmittal No. 2287, Sprint's petition, and related pleadings. We conclude that no compelling argument has been presented that the tariff is patently unlawful so as to warrant rejection, and that an investigation is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition to reject, suspend, or investigate American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2287, filed by US Sprint Communications Company Limited Partnership, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-68

In re Applications of

MODESTO BROADCAST GROUP	File No. BPH-880229MB
HARRY S. McMURRAY	File No. BPH-880301MP
MODESTO COMMUNICATIONS CORPORATION	File No. BPH-880301NC
JUAN MANUAL AYALA	File No. BPH-880301NF
Eileen S. Lapin, Douglas M. Lapin, and Stanley P. Lapin d/b/a LAPINCO	File No. BPH-880301NJ
JUAREZ and FLORES, INC.	File No. BPH-880301OJ
BCD LIMITED PARTNERSHIP	File No. BPH-880301OS
THOMAS REINSTEIN COMMUNICATIONS, A California Limited Partnership	File No. BPH-880301OU
PAMELA R. JONES	File No. BPH-880301OY

For Construction Permit for
New FM Station, Channel 230A,
Modesto, California

MEMORANDUM OPINION AND ORDER

Adopted: July 16, 1990; Released: July 26, 1990

By the Review Board: MARINO (Chairman), BLUMENTHAL, and ESBENSEN.

1. Before the Review Board is a document styled "Petition for Grant of Extraordinary Relief" filed by Pamela R. Jones on July 2, 1990, seeking "relief" from the *Memorandum Opinion and Order*, FCC 90M-1347, released May 25, 1990, and the *Memorandum Opinion and Order*, FCC 90M-1627, released June 12, 1990, by Chief Adminstrative Law Judge Joseph Stirmer (ALJ). BCD Limited Partnership filed an Opposition on July 11, 1990.

2. In his May 25 order, the ALJ added the following issues with respect to Jones (footnote omitted):

> [1] To determine the facts and circumstances regarding the filing of the numerous applications by Pamela R. Jones, and, based thereon, whether she has violated the provisions of Section 73.3555 and Section 73.3518, and/or abused the Commission's processes;
>
> [2] To determine whether Pamela R. Jones has violated Section 1.65 of the Commission's rules in connection with her failure to timely amend her application to update the status of her media interests;
>
> [3] To determine whether Pamela R. Jones is financially qualified to build and operate her proposed station, particularly in light of her other pending applications, and whether her financial certification was/is false.

The ALJ also assigned the burdens of proceeding and proof on Jones "because the facts necessary to resolve these issues are peculiarly within the knowledge of Pamela R. Jones . . . ."

3. Thereafter, Jones, pursuant to 47 CFR § 1.301(b), filed (on June 6, 1990) a Motion for Leave to File Appeal with the ALJ. By his June 12 order, the ALJ denied Jones' motion, holding that Jones had not demonstrated "a new or novel question of law or policy [which would be] likely to require remand . . . ." Indeed, the ALJ noted that "the failure to add the issues would likely court a remand rather than adding the issues."[1] However, the ALJ there modified his May 25 order, stating (at para. 4):

> However, Jones' motion raises a matter which requires further consideration. Specifically, an important factor relied upon by the Presiding Judge in adding the issue relating to Section 73.3555 and 73.3518 was the return by the staff of Jones' Homewood, Alabama, application. Since the release of the Presiding Judge's [May 25] *Memorandum Opinion and Order* adding the issues, Jones states that a petition seeking reconsideration of the staff's action returning Jones's Homewood, Alabama, application was filed. Because the Presiding Judge relied on this factor in adding the issue, and because this matter is now the subject of reconsideration, the better procedure will be for the Presiding Judge to defer hearing and hearing procedures on the 73.3555 and 73.3518 issue until the Commission acts on the reconsideration request.

4. In adding Issues [2] and [3], *supra*, the ALJ reasoned as follows:

> Jones has on file numerous broadcast applications and has not shown that she is financially qualified to build and operate any of them. In this connection, it has been held that where an applicant files multiple applications, it must be able to demonstrate that it is financially qualified as to all pending [applications]. *George Edward Gunter*, 60 RR 2d 1662, 1664 (1986). The Presiding Judge knows nothing about Pamela Jones and her financial condition.

It is unknown whether she is financially qualified to build any of the stations for which she has applied. What is known is that the Commission has previously expressed its concern with the financial qualifications of applicants who have "a large number of pending broadcast applications." *See, In the Matter of Certification of Financial Qualifications by Applicants for Broadcast Station Construction Permits*, 2 FCC Rcd 2122 (1987). Jones falls squarely into this category, and the requested financial issue will be specified so the matter may be fully explored. With regard to the request for a Section 1.65 issue, the Presiding Judge is not persuaded by the arguments advanced by Jones. It is clear that Jones did not timely amend her application to report the filing of numerous broadcast applications. It is also clear that a reporting issue was previously designated against an applicant with which Jones was associated. It also appears that Jones did not timely respond to a directive in the *Hearing Designation Order* (DA 90-196 at paragraph 15) requiring an amendment of her application. The Presiding Judge is unable to determine, on the basis of the pleadings, whether the reporting deficiencies committed by Jones are disqualifying. Thus an appropriate issue will be specified.

5. In her Petition before the Board, Jones argues that the two ALJ orders must be vacated because (1) only the Commission's Mass Media Bureau has "exclusive jurisdiction" to audit the financial qualifications of applicants who have filed "large numbers" of applications;[2] (2) the ALJ "ignored" extant precedent as to 47 CFR § 1.65 reporting requirements; and (3) the ALJ abused his discretion in his allocation of the burdens of proceeding and proof.

6. 47 CFR § 1.301(b) provides that "appeals from interlocutory rulings of the presiding officer shall be filed only if allowed by the presiding officer. Any party desiring to file an appeal shall first file a request for permission to file appeal." 47 CFR § 1.301(b)(1) further provides that "[i]f an appeal is not allowed . . . objection to the ruling may be raised on review of the initial decision." Here, the ALJ denied Jones' motion for leave to file an appeal. And, it "is well-settled Commission practice that where leave to appeal an ALJ's interlocutory ruling has been dismissed pursuant to 47 CFR § 1.301(b), the ruling will be considered final unless egregious error or flagrant abuse is discretion of shown." *Rem Malloy Broadcasting*, FCC 90R-59, released July 5, 1990. *See Shawn Phalen*, 5 FCC Rcd 2622 (Rev. Bd. 1990); *Communications Satellite Corp.*, 32 FCC 2d 533 (1971); *Ronald Sorenson*, 3 FCC Rcd 5022 (Rev. Bd. 1988); *Jan - Di Broadcasting, Inc.*, 93 FCC 2d 890 (Rev. Bd. 1983). Further, the Board has held that "the addition of hearing issues, which is entrusted to the ALJ, by the Commission's Rules, 47 CFR § 1.243(k), is not a matter subject to extraordinary relief." *Charisma Broadcasting Corp.*, 63 RR 2d 393 (Rev. Bd. 1987). Here, the ALJ obviously believes that there are substantial and material questions of fact concerning Jones' application, and we perceive no flagrant abuse of discretion or egregious error in his addition of the issues.[3]

7. ACCORDINGLY, IT IS ORDERED, That the "Petition for Grant of Extraordinary Relief" filed by Pamela R. Jones on July 2, 1990, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Eric T. Esbensen
Member, Review Board

FOOTNOTES

[1] The ALJ's prescient comments are well-taken. It is likely that had these matters remained unresolved in the proceeding below, the Board would have found similar substantial and material questions of fact requiring a remand.

[2] Jones' assertion that the Bureau has exclusive authority to question the financial qualifications of a multiple applicant is incorrect. Whenever "substantial and material questions of fact" are timely raised concerning an applicants basic qualifications, appropriate issues must be added by the authority having jurisdiction over the proceeding at the time. *See* 47 CFR § 1.229; *see also Ronald Sorenson*, 5 FCC Rcd 3144, 3145 and n.6 (Rev. Bd. 1990).

[3] Although we deny Jones' petition pursuant to 47 CFR § 1.301, the Board also notes that with respect to the ALJ's allocation of the burdens of proceeding and proof on Jones, 47 CFR § 1.254 (which tracks 47 U.S.C. § 309(e)), specifically provides that:

> Any hearing upon an application shall be a full hearing in which the applicant and all other parties in interest shall be permitted to participate but in which both the burden of proceeding with the introduction of evidence upon any issue specified by the Commission, as well as the burden of proof upon all such issues, shall be upon the applicant except as otherwise provided in the order of designation.

See TeleStar, Inc., 3 FCC Rcd 1860 (1988), *aff'd* , 886 F.2d 442 (D.C. Cir. 1989). Here, the ALJ has followed the requirements of 47 CFR § 1.254, and has set forth his reasons for the allocation of both burdens on Jones. We perceive no flagrant abuse by the ALJ. *Rem Malloy Broadcasting, supra, at* para. 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company
Revisions to Tariff F.C.C. No. 12

Transmittal No. 2331

ORDER

Adopted: July 19, 1990; Released: July 26, 1990

By the Chief, Common Carrier Bureau:

1. Transmittal 2331 introduces Virtual Telecommunications Network Service (VTNS) Option 50 by which American Telephone and Telegraph Company (AT&T) will provide voice and data communications service among stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. Following substantially complete installation, the rates for this option are stabilized throughout a three-year term. Transmittal 2331 Description and Justification (D&J) at 1-4.

2. The basic charge for VTNS Option 50 is $499,000 per month, with a discount of $149,115 per month for a four-month period following the initial service date if ordered before January 1, 1991, and initiated by June 1, 1991. *Id.* at 5. Transmittal 2331 is scheduled to become effective July 28, 1990.

3. US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject, or alternatively, to suspend and investigate Transmittal 2331 on June 14, 1990. AT&T filed a reply on June 22, 1990.

4. Sprint argues that AT&T has failed to demonstrate that Option 50 is an integrated service package that is "unlike" its other component services. Sprint Petition at 1-2. Moreover, Sprint contends that AT&T's proposal of 52 individual VTNS offerings makes clear that each such offering is designed for one customer. Additionally, Sprint maintains that various specifications in the transmittal also effectively restrict the offering to one customer. *Id.* at 2-3. Noting that AT&T filed a standard set of rates for the international satellite, data, and voice transmission capabilities in Transmittal 2220, and that these Tariff 12 offerings in general have similar rate structures, Sprint contends that the Commission should order AT&T to offer these rates under a generally available tariff, as it did in the case of the individual case basis (ICB) rates for the local exchange carriers' DS3 service. *Id.* at 3-4. Sprint also alleges that AT&T's cost support for Option 50 is "seriously deficient" and incorporates by reference the arguments it raised against VTNS Options 17, 18, and 19 (AT&T Transmittals 1810, 1826, and 1832, respectively). *Id.* at 4 & n.4[1]

5. AT&T contends that the rates in Option 50 are not unjustly discriminatory because the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. AT&T Reply at 2-3. AT&T also states that the Commission has consistently found AT&T's standard, Commission-sanctioned cost systems sufficient to support AT&T's Tariff 12 filings. AT&T contends that these methods satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 6-7 & 7 n.*.

6. The Common Carrier Bureau has reviewed AT&T Transmittal No. 2331, Sprint's petition, and related pleadings. We conclude that no compelling argument has been presented that this tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

7. Accordingly, IT IS ORDERED that the petition to reject, or to suspend and investigate, American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2331, filed by US Sprint Communications Company Limited Partnership, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Sprint maintains that the arguments raised against those transmittals continue to be valid because the Bureau's Order addressing Options 17, 18, and 19 did not address them. Sprint Petition at 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company
Revisions to Tariff F.C.C. No. 12

Transmittal No. 2358

ORDER

Adopted: July 19, 1990; Released: July 20, 1990

By the Chief, Common Carrier Bureau:

1. Transmittal 2358 introduces Virtual Telecommunications Network Service (VTNS) Option 52 by which American Telephone and Telegraph Company (AT&T) will provide voice and data communications service among stations in the United States, Puerto Rico, the U.S. Virgin Islands, and specific international locations. Following substantially complete installation, the rates for this option are stabilized throughout a three-year term. Transmittal 2358 Description and Justification (D&J) at 1-4. The basic charge for VTNS Option 52 is $142,400 per month. *Id.* at 5. Transmittal 2358 is scheduled to become effective July 23, 1990.

2. On June 25, 1990, US Sprint Communications Company Limited Partnership (Sprint) filed a petition to reject, or alternatively, to suspend and investigate the instant transmittal. AT&T filed a reply on July 5, 1990.

3. Sprint argues that AT&T has failed to demonstrate that Option 52 is an integrated service package that is "unlike" its other component services. Sprint Petition at 1-2. Moreover, Sprint contends that AT&T's proposal of 54 individual VTNS offerings makes clear that each such offering is designed for one customer. Additionally, Sprint maintains that various specifications in the transmittal also effectively restrict the offering to one customer. Sprint further argues that the individualized pricing of VTNS options is comparable to the local exchange carriers' individual case basis (ICB) rates for DS3 service, that AT&T now has sufficient experience to end its individualized pricing and develop general rates, and that the Commission thus should order AT&T to offer these rates under a generally available tariff, as it did in the ICB DS3 case. *Id.* at 2-4. Sprint also alleges that AT&T's cost support for Option 50 is "seriously deficient" and incorporates by reference the arguments against VTNS Options 17, 18, and 19 (AT&T Transmittals 1810, 1826, and 1832, respectively). *Id.* at 4 & 5 n.4.[1]

4. AT&T contends that the rates in Option 52 are not unjustly discriminatory because the Communications Act prohibits discrimination only between "like" services, and the Commission has held that Tariff 12 integrated service packages are not "like" the component services offered in separate tariffs. AT&T Reply at 2-3. AT&T also states that the Commission has consistently found AT&T's standard, Commission-sanctioned cost systems sufficient to support AT&T's Tariff 12 filings. AT&T contends that these methods satisfy the requirements of Section 61.38 of the Commission's Rules. *Id.* at 5-7 & 7 n. * * *.

5. The Common Carrier Bureau has reviewed AT&T Transmittal No. 2358, Sprint's petition, and related pleadings. We conclude that no compelling argument has been presented that this tariff is so patently unlawful as to warrant rejection, and that an investigation is not warranted at this time.

6. Accordingly, IT IS ORDERED that the petition to reject, or to suspend and investigate, American Telephone and Telegraph Company Tariff F.C.C. No. 12, Transmittal No. 2358, filed by US Sprint Communications Company Limited Partnership, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTE

[1] Sprint maintains that the arguments raised against those transmittals continue to be valid because the Bureau has not addressed these arguments on the merits in any previous Order. Sprint Petition at 5.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

AT&T Communications, Inc. Revisions to Tariff F.C.C. No. 15 Competitive Pricing Plan 2 - Resort Condominiums International	**CC Docket No. 90-11** Transmittal Nos. 1854 and 1883
Competition in the Interstate Interexchange Marketplace	**CC Docket No. 90-132**

ORDER

Adopted: July 16, 1990; Released: July 27, 1990

By the Chief, Common Carrier Bureau:

1. On April 2, 1990, the National Telephone Cooperative Association (NTCA) filed a motion to consolidate the proceedings in CC Docket No. 90-11, AT&T's second Competitive Pricing Plan (CPP2)[1] with CC Docket No. 90-132, the Rule Making on competition in the interstate interexchange marketplace (*Interexchange* proceeding).[2] In the alternative, NTCA requests that the Commission "stay" its decision on the lawfulness of the CPP2 offering until after a decision is reached in the *Interexchange* proceeding. [3] We deny NTCA's motion.

2. NTCA argues that the *Interexchange* NPRM and the CPP2 offering raise identical issues and that a decision on the lawfulness of the CPP2 filing would prejudge issues raised in the *Interexchange* proceeding. Specifically, NTCA states that in both proceedings the Commission must decide: (1) whether AT&T should be permitted to offer single customer offerings on a contract basis; (2) under what circumstances single customer offerings violate Sections 201 and 202 of the Communications Act, 47 U.S.C. §§ 201 and 202; and (3) how to apply the doctrine of competitive necessity. NTCA also states that both proceedings raise universal service and geographic deaveraging concerns.[4] NTCA contends that AT&T will not be harmed by consolidation because the CPP2 tariff will become effective on June 21, 1990 (unless the Commission finds it unlawful before that date) and therefore will be in effect during the pendency of the Rule Making.[5]

3. MCI Telecommunications Corporation (MCI) and AT&T oppose NTCA's motion. MCI argues that CPP2 is unlawful and that prompt Commission action is required to prevent AT&T from filing additional Tariff 15 offerings. MCI also contends that the decision in the CPP2 investigation would not necessarily prejudge the *Interexchange* proceeding.[6] AT&T states that the issues raised in the CPP2 filing and the *Interexchange* proceeding are not identical because CPP2 involves a determination of the lawfulness of AT&T's offering under the competitive necessity doctrine, while the *Interexchange* proceeding initiates an inquiry into possible changes in regulatory policy for the interstate long-distance marketplace.[7] AT&T also argues that NTCA's request for a stay of the Commission's decision regarding CPP2 is improper because there has been no decision which could be stayed.[8]

4. In its reply, NTCA reiterates its concern that the Commission will render a decision regarding CPP2 without adequately considering related issues such as universal service. NTCA also argues that the legal requirements for a stay of the CPP2 decision have been met and that a stay is appropriate.[9]

5. We conclude that it is unnecessary and undesirable to consolidate the CPP2 proceeding with the *Interexchange* proceeding. While there is potentially some overlap, the *Interexchange* proceeding raises a large number of issues, most of which would not be affected by the resolution of CPP2. Furthermore, tariff investigations and Rule Makings are designed to serve different purposes and, accordingly, employ different procedural mechanisms. Tariff investigations are fact-specific and directed at particular parties and particular circumstances, while Rule Making proceedings generally are prospective in nature, and may involve, as the *Interexchange* NPRM does, a very broad look at an industry.

6. In view of the differences here between a Section 204 tariff investigation and a Rule Making of general applicability, consolidation in a single docket would not be appropriate. The *Interexchange* proceeding was intended to begin a comprehensive examination of the Commission's policies relating to the regulation of the interexchange marketplace. During the pendency of that Rule Making, we anticipate that numerous other proceedings will raise issues that relate to the interexchange industry. Many such proceedings can be resolved consistently with Commission actions in the *Interexchange* proceeding without formal consolidation. Accordingly, we deny NTCA's motion to consolidate the CPP2 tariff investigation and the *Interexchange* proceeding.[10]

7. Accordingly, IT IS ORDERED, that pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, NTCA's motion for consolidation, or, in the alternative, for stay IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] *AT & T Communications, Inc.*, CC Docket No. 90-11, DA 90-44, 5 FCC Rcd 2171 (1990).

[2] Competition in the Interstate Interexchange Marketplace, Notice of Proposed Rule Making, CC Docket no. 90-132, 5 FCC Rcd 2627 (1990).

[3] NTCA Motion for Consolidation and in the Alternative for Stay, filed April 2, 1990.

[4] *Id.* at 2-4 (quoting Policy and Rules Concerning Rates for Dominant Carriers, 2 FCC Rcd 5208, 5215 (1987)).

[5] *Id.* at 4-5.

[6] Opposition to Motion for Consolidation and in the Alternative for Stay, filed April 5, 1990 at 2-3.

[7] AT&T argues that the Commission's investigation of CPP2 has not raised geographic rate deaveraging issues. AT&T also contends that its offering will promote universal service.

[8] Response to Motion for Consolidation and In the Alternative for Stay, filed April 5, 1990.

[9] NTCA Reply to AT&T and MCI Oppositions to NTCA Motion for Consolidation and in the Alternative for Stay, filed April 13, 1990.

[10] We also conclude that NTCA's request to stay the CPP2 proceeding is improper since there is no decision that could be stayed.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: July 27, 1990

COMMON CARRIER BUREAU ENCOURAGES VOLUNTARY CARRIER PARTICIPATION IN CONSUMER EDUCATION PROGRAM

The Commission is committed to ensuring that consumers have access to their carrier or carriers of choice in the competitive long distance market. As a result of the Commission's longstanding procompetitive policies, there are a number of companies providing competitive long distance interstate and international services. The Commission also has taken steps to ensure the availability of sufficient information to consumers and to help consumers make informed choices by proposing rules and policies concerning the practices of operator service providers. *See Policies and Rules Concerning Operator Service Providers*, Notice of Proposed Rule Making, CC Docket No. 90-313, FCC 90-231 (released July 17, 1990).

Many consumers, however, are unfamiliar with how to access their long distance carrier of choice from other than their home or business phone, or with how to access an alternative carrier from their home or business should their primary carrier experience network difficulties. Accordingly, the Bureau is encouraging carriers serving the interstate and/or international markets to participate voluntarily in a consumer education program designed to familiarize the public with ways to access service providers. Participants are asked to submit responses to the information listed below. This information will be summarized and made available to the public.

1. Name and address of carrier.

2. 10XXX, 950, 1-800 and other access numbers.

3. Instructions for placing calls from both equal and non-equal access areas of the country.

4. Instructions for placing international calls if different than placing domestic calls.

5. Instructions for placing calls from transient telephone locations and homes or businesses, if different.

6. Instructions for presubscribed callers and casual usage callers, if different.

7. Specific geographic area served if other than nationwide.

8. Customer number to call for rates and/or service information.

9. Other relevant consumer information.

This information, along with any documentation, should be submitted no later than **August 27, 1990** to Ms. Joanne M. Johnson, FCC, Informal Complaints Branch, Common Carrier Bureau, 2025 M Street, N.W., Room 6202, Washington, D.C. 20554. For further information, please contact Ms. Johnson at 202-632-7553.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-368

In the Matter of

Amendment of Section 73.202(b), RM-6809
Table of Allotments,
FM Broadcast Stations.
(Greenwood, Mississippi)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 19, 1990; Released: July 27, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 6628 (1989), issued in response to a petition filed by Team Broadcasting Co., Inc. (petitioner), permittee of Station WGNL, Channel 282A, Greenwood, Mississippi, proposing the substitution of FM Channel 282C3 for Channel 282A, and modification of its construction permit (BPH-861020SZ) to specify the higher class channel. Petitioner filed comments in which it reaffirmed its interest in the channel. No other comments were received.

2. We believe the public interest would be served by the substitution of Channel 282C3 for Channel 282A at Greenwood, Mississippi, since it could provide the community with its second wide coverage FM service. The channel can be allotted to Greenwood in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site, 11.7 kilometers (7.3 miles) northwest of the community.[1]

3. As requested, we are authorizing a modification of petitioner's permit for Station WGNL, Greenwood, Mississippi, to specify operation on Channel 282C3 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 10, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

City	Channel No.
Greenwood, Mississippi	230A, 256C, 282C3

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the construction permit for Station WGNL, Greenwood, Mississippi, IS MODIFIED to specify operation on Channel 282C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 282C3 are 33-35-48 and 90-15-50. Because the petition which resulted in this allotment was filed prior to October 2, 1989, petitioner may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. § 73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-475

In the Matter of

Amendment of Section 73.202(b), RM-6925
Table of Allotments,
FM Broadcast Stations.
(Mount Vernon, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 19, 1990; Released: July 27, 1990

By the Deputy Chief, Policy and Rules Division:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 4 FCC Rcd 7855 (1989), issued in response to a request filed by Linda Adams, d/b/a Missouri FM (petitioner), permittee of Channel 294A, Mount Vernon, Missouri, proposing the substitution of FM Channel 294C3 for Channel 294A and modification of her construction permit accordingly. Petitioner filed comments in which she reaffirmed her interest in the channel. No other coments were received.

2. We believe the public interest would be served by the substitution of Channel 294C3 for Channel 294A at Mount Vernon, Missouri, since it could provide the community with its first wide area coverage FM service. The channel can be allotted to Mount Vernon in compliance with the minimum distance separation requirements of the Commission's Rules at the petitioner's specified site, 18.6 kilometers (11.5 miles) east of the community.[1]

3. As requested, we have authorized a modification of petitioner's permit for Channel 294A, Mount Vernon, Missouri, to specify operation on Channel 294C3 in accordance with Section 1.420(g) of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 10, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Mount Vernon, Missouri	294C3

5. IT IS FURTHER ORDERED, pursuant to the authority contained in Section 316 of the Communications Act of 1934, as amended, that the permit for Channel 294A, Mount Vernon, Missouri, IS MODIFIED to specify operation on Channel 294C3, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the permittee shall file with the Commission a minor change application for construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for Channel 294C3 at petitioner's specified site are 37-09-16 and 93-36-58. Because the petition which resulted in this allotment was filed prior to October 2, 1989, petitioner may avail herself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-339

In the Matter of

Amendment of Section 73.202(b), RM-7315
Table of Allotments,
FM Broadcast Stations.
(Coahoma, Texas)

NOTICE OF PROPOSED RULE MAKING

Adopted: July 20, 1990; Released: July 27, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Joseph Smitherman (petitioner), the Commission considers herein a petition for rule making seeking the allotment of Channel 232A to Coahoma, Texas, as that community's first local aural service. Petitioner states an intention to apply for the channel, if allotted.

2. A staff engineering analysis has determined that Channel 232A can be allotted to Coahoma, Texas, in compliance with the Commission's minimum distance separation requirements.[1] Mexican concurrence in the allotment is required since Coahoma is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

3. In view of the fact that Coahoma, Texas, could receive its first local aural service, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

	Channel No.	
City	Present	Proposed
Coahoma, Texas	--	232A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **September 17, 1990,** and reply comments on or before **October 2, 1990,** and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Joseph Smitherman
Post Office Box 832
Cameron, Texas 76520
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73. 202 (b), 73. 504 and 73. 606 (b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It

should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut - off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. *(See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. *(See* Section 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

FOOTNOTE

[1] The coordinates for Channel 232A at Coahoma, Texas, are 32-17-36 and 101-18-18.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 89-365

In the Matter of

Amendment of Section 73.202(b), RM-6811
Table of Allotments,
FM Broadcast Stations.
(Ottumwa, Iowa)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 20, 1990; Released: July 27, 1990

By the Deputy Chief, Policy and Rules Division:

1. At the request of Gillbro Communications Limited Partnership (petitioner), the Commission has before it the *Notice of Proposed Rule Making*, 4 FCC Rcd 6518 (1989), proposing the substitution of Channel 224C3 for Channel 224A at Ottumwa, Iowa, and the modification of its license for Station KTWA to specify operation on the higher powered channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 224C3 for Channel 224A at Ottumwa since it could enable Station KTWA to expand its coverage area. Channel 224C3 can be allotted to Ottumwa in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.1 kilometers (5.0 miles) northwest to avoid a short-spacing to the pending application of Station KGRC, Channel 225C1, Hannibal, Missouri (BPH-890202IC) and to accommodate petitioner's desired transmitter site.[1] As proposed, we will modify petitioner's license for Station KTWA to specify operation on Channel 224C3.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 10, 1990,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Ottumwa, Iowa	224C3, 249A

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Gillbro Communications Limited Partnership for Station KTWA, Ottumwa, Iowa, IS MODIFIED to specify operation on Channel 224C3, in lieu of Channel 224A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Deputy Chief
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordinates for this allotment are North Latitude 41-05-00 and West Longitude 92-27-30. Because the petition which resulted in this allotment was filed prior to October 2, 1989, the licensee may avail itself of the provisions of Section 73.213(c) of the Commission's Rules. *See* 47 C.F.R. §73.213(c).

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 88-57

In the Matter of

Review of Sections 68.104 and
68.213 of the Commission's Rules
Concerning Connection of
Simple Inside Wiring
to the Telephone Network

and

Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association — RM-5643

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: June 8, 1990; Released: June 14, 1990

By the Commission:

TABLE OF CONTENTS

	Paragraph
I. Introduction	1
II. Background	2
III. Comments and Discussion	7
A. Customer Access to Carrier-Installed Wiring	7
B. Demarcation Point	26
C. Responsibility	32
D. Access to the Protector	36
E. Extraordinary Procedures	47
F. Manufacturer's Attestations	52
G. Acceptance Testing	57
H. Notification	60
I. Gold Equivalency, Plug, Jack Requirements	63
J. Accounting Requirements	72
K. Network Disclosure	75
IV. Notice of Proposed Rule Making	77
V. Regulatory Flexibility Act Certification	79
VI. Ex Parte Presentations	80
VII. Ordering Clauses	84

I. INTRODUCTION

1. In *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network* (Notice of Proposed Rule Making), CC Docket No. 88-57, 3 FCC Rcd 1120 (1988) (*Notice*), the Commission undertook a review of the rules setting forth the terms and conditions under which customers may install and connect to the network simple inside telephone wiring. In this *Report and Order and Further Notice of Proposed Rule Making* we (1) modify Section 68.104 to allow customers to connect simple inside wiring to the telephone network by direct access to carrier-installed wiring at points up to and including the demarcation point, (2) revise the definition of the demarcation point in Section 68.3 so that in most cases it will be at or near where wiring enters the customer's premises, (3) modify Section 68.108 to authorize the carrier to discontinue service when harm occurs originating from customer-installed wiring, or when the carrier reasonably believes such harm is imminent, (4) delete Sections 68.213 (e), (f) and (g) concerning notification, acceptance testing and extraordinary procedures, (5) determine that jacks and plugs used in inside wiring must conform to Subpart F, and (6) encourage local exchange carriers to develop and submit to subscribers an informational brochure on the rights of subscribers to perform inside wiring operations. We additionally issue a further notice of proposed Rule Making to expand the scope of Section 68.213 to encompass wiring installations of up to four lines.

II. BACKGROUND

2. Part 68 of the Commission's rules governs the terms and conditions for connection of customer provided terminal equipment and wiring to the telephone network. Part 68 is designed to assure consumers, manufacturers and carriers that terminal equipment and wiring may be connected to the telephone network without causing harm. *See* 47 C.F.R. § 68.1. Section 68.104 of the rules, 47 C.F.R. § 68.104, provides that all connections to the network shall be made through the standard plugs and standard telephone company-provided jacks described in Subpart F of Part 68.[1] The technical specifications in Subpart F concern dimensions, gauging, materials, wiring, manufacturing processes, and spring tensions. Among the requirements is that in 6 and 8 pin jacks the contact interface should be hard gold to hard gold and should have a minimum gold thickness of 0.000050 inch on each side of the interface or the equivalent.

3. The Commission has found that customers should be permitted to install their own simple inside wiring.[2] In *Petitions Seeking Amendment of Part 68 of the Commission's Rules Concerning Connection of Telephone Equipment, Systems and Protective Apparatus to the Telephone Network* (Report and Order), CC Docket 81-216, 97 FCC 2d 527 (1984) (*First Report and Order), stay denied, Order*, FCC 84-546, released November 20, 1984, *recon. granted in part, Section 68.213 Reconsideration Order*, 50 Fed. Reg. 29384 (1985), the Commission concluded, *inter alia*, that "the likelihood that one and two-line wiring will be improperly installed, causing network harm, is not substantial," 97 FCC 2d at 554, and adopted Section 68.213 of

the rules. Customers were permitted to connect one and two-line business and residential wiring to the network, subject to certain restrictions and responsibilities. The Commission also established a definition for the network interface or demarcation point, [3] to serve generally as the point for bifurcating carrier and non-carrier responsibilities. Wiring on the carrier side of the network interface is the responsibility of the carrier, and wiring on the customer side of the network interface is the responsibility of its owner. The Commission extended to customer-provided inside wiring the preexisting requirement of Section 68.104 that all connections to the network must be made through a carrier-installed jack. *Id.* 540-542; *Section 68.213 Reconsideration Order*, n. 35. Thus, stated the Commission, the inside wiring program "contemplates that new premises wiring, as well as additions and modifications to existing premises wiring, will be connected to the network through an already existing jack or telephone company installed demarcation jack." *Section 68.213 Reconsideration Order*, para. 14. The Commission interpreted this requirement to preclude the customer or his agent from splicing into wiring installed by the carrier and installing a jack. *Order, supra*, para. 5; *Section 68.213 Reconsideration Order*, para. 21. The Commission stated that requiring customer-provided inside wiring to be connected to the network through a carrier-installed jack would enable easy disconnection of inside wiring should harm occur, 97 FCC 2d at 541, and would also serve to accomplish the objective of limiting access to the protector on the carrier side of the demarcation point to the carrier because a telephone company-installed jack at the demarcation point would always be interposed between the protector and customer-provided inside wiring.[4] 97 FCC 2d 540-542. With respect to location and relocation of the network interface, the Commission stated that this should be performed by the carrier in accordance with nondiscriminatory standard operating practices. *First Report and Order*, para. 24.

4. In the *First Report and Order* the Commission also imposed other terms and conditions on customer installation and connection to the telephone network of inside wiring. These included insulation standards for wire,[5] a requirement that manufacturers of wire attest that it meets those standards,[6] a requirement that customers test newly installed wiring,[7] a requirement that customers on request provide certain information to the carrier on inside wiring installations,[8] and an authorization to the telephone company to invoke certain extraordinary procedures when network harm was caused by customer-installed inside wiring.[9] In the *First Report and Order* the Commission deferred consideration of a request by AT&T that plugs and jacks used in conjunction with simple inside wiring (*i.e* plugs and jacks on the customer's side of the demarcation point) be subject to regulatory standards:

> AT&T urges that we note in our definition of non-system wiring that passive devices used in wiring operations, such as connectors, blocks and jacks, are considered part of COPW and are included in Section 68.213 . . . . We are currently considering the deregulation of cords and other passive devices in RM-3227 in this docket . . . . Indeed, pending disposition of that Rule Making we have exempted cords and electrically transparent adapter boards from the registration program . . . . We therefore do not believe it appropriate to act upon AT&T's proposal at this time.

Id. n. 29. In *Third Report and Order*, CC Docket 81-216, 51 Fed. Reg. 929 (January 9, 1986), para. 11, the Commission, addressing RM-3227, eliminated all Part 68 registration requirements for cords, passive adapters, adapter boards and cross-connect panels as unnecessary regulatory requirements. However, the Commission did not address the issue raised by the American Telephone & Telegraph Co. (AT&T) in connection with the *First Report and Order* of whether plugs and jacks on the customer side of the network interface or demarcation point should be required to conform to Subpart F.

5. In the *Notice* in this docket the Commission undertook a general review of the restrictions imposed by Section 68.213 on the customer's ability to install and connect to the telephone network simple inside wiring. In particular, the Commission expressed concern that the requirement that inside wiring be connected to the network only through a carrier-installed jack might be causing consumers unnecessary costs as they install, modify and use wiring and other equipment in ways that may be privately beneficial. The Commission proposed to modify Section 68.104 to allow the customer or his agent to sever carrier-installed inside wiring and install a standard jack described in Subpart F. The Commission solicited comments on whether in connection with installation of a jack the customer should be allowed access to the protector and whether any of its rule proposals necessitated a change in definition of the network interface or demarcation point. The Commission proposed to eliminate the authorization for the carrier to take extraordinary procedures when harm occurred originating in inside wiring but to modify Section 68.108 to authorize the carrier to discontinue service when harm has occurred. The Commission solicited comment on the continued need for, but did not specifically propose to eliminate, the attestation requirement for inside wire of Section 68.213(d) and the notification requirement of Section 68.213(e). The Commission offered for comment a petition for Rule Making filed by the Electronic Industries Association (EIA) requesting that the Commission rule that all plugs and jacks used in inside wiring, not just the jack at the network interface, are required to conform to the technical specifications of Subpart F. The Commission stated that EIA's assumption was incorrect that such jacks are not already required to conform to Subpart F, but offered the EIA petition for comment in order to clarify the situation. Finally, the Commission offered for comment an AT&T request that Subpart F be modified to eliminate the language that allowed materials equivalent to gold in the jack contact interface.

6. In the *Second Report and Order* CC Docket 79-105, 51 Fed. Reg. 8498 (1986),(*Inside Wiring Detariffing Order*), *recon. in part, Inside Wiring Reconsideration Order*, 1 FCC Rcd 1190, *further recon.* 3 FCC Rcd 1719 (1988), *remanded, NARUC V. FCC*, 880 F.2d 422 (1989), the Commission determined, *inter alia*, that the installation and maintenance of simple inside wiring would be preemptively detariffed as of January 1, 1987. In detariffing those services, the Commission stated that it did not believe that any new requirement with respect to the installation of standard jacks was necessary at that time. *Inside Wiring Detariffing Order*, para. 41. The Commission initially re-

quired telephone companies to relinquish their claims to ownership of inside wiring. *Id.* paras. 52, 57. However, in the *Inside Wiring Reconsideration Order*, the Commission decided that less intrusive measures would be sufficient to accomplish the purposes behind the relinquishment requirement. Specifically, the Commission prohibited carriers from using claims of ownership of inside wiring as a basis for restricting the removal, replacement, rearrangement or maintenance of inside wiring that had ever been installed or maintained under tariff. *Id.* at paras. 34-35, 43. The Commission's policy objectives in taking these actions were to increase competition in the provision of installation and maintenance of inside wiring, to promote new entry into the inside wiring market, to produce cost savings for ratepayers, and to create an unregulated competitive marketplace environment for the development of communications. In *NARUC v. FCC* the court remanded the Commission's decisions in CC Docket 79-105 preemptively detariffing the installation and maintenance of inside wiring. The court found that the Commission had insufficiently justified its preemption of state regulation:

> We hold today . . . . that the FCC may preempt inconsistent state regulation so long as it can show that the state regulation negates a valid federal policy. In this regard, the FCC may require the states to unbundle inside wiring from basic transmission services so that consumers may be able to choose from among available providers. . . . . In order to justify preemption of any other state tariffs, however, the FCC must show that such tariffs necessarily thwart achievement of a free and competitive inside wiring market. The FCC . . . . has not done so here.

Slip. Op. at 19.[10]

III. COMMENTS AND DISCUSSION

A. Customer Access to Carrier - Installed Wiring.

7. Since 1984 the Commission has permitted customers to connect inside wiring to the network through carrier-installed standard plugs and jacks. (Section 68.104 of the rules.) In the *Notice*, the Commission proposed to amend Section 68.104 to permit customers and their agents to connect simple inside wiring to the telephone network by severing carrier-installed wire and installing a standard jack described in Subpart F.

8. *Comments*. GTE Service Corporation (GTE), the NYNEX Telephone Companies (NYNEX), Pacific Bell and Nevada Bell (PacBell), Cincinnati Bell Telephone Company (CBT), the Central Telephone Company (Centel), and the United States Telephone Association (USTA) oppose the Commission's proposal to allow customers to access carrier wiring at the demarcation point. NYNEX states that terminating the network in a carrier-installed jack provides a ready means of disconnecting premises wiring while rearranging or reconfiguring it, or if trouble should originate from inside wiring. This assures, states NYNEX, that the customer will not be shocked by ringing current or abnormal high voltages due to power crosses or lightning. A carrier-installed jack also provides a useful test point for determining whether problems are on the customer's side of the demarcation point. According to GTE, in some jurisdictions the savings from avoiding one repair visit by the telephone company can more than offset the charge to have the telephone company install a jack at the demarcation point. Therefore, customers may not actually save by installing a jack at the demarcation point themselves, states GTE. GTE further states that customers may make incorrect connections, short a line and tie up central office equipment. USTA claims that customers are not qualified to install jacks at the demarcation point, that location of the demarcation point would be at the whim of the subscriber, which, depending on where it is located, may result in carriers being responsible for customer-installed wiring on the carrier side of the interface. CBT and PacBell state that allowing customers to access wiring at the demarcation point may encourage them to access and disturb, intentionally or inadvertently, the protector and its associated grounding. PacBell informs the Commission that it is in the process of installing jacks for its customers and that this will satisfy the Commission's concerns without any rule changes. It states that it only charges for installation of a jack at the demarcation point when installation of one is specifically requested by the customer. This obviates any need for rule changes in this area, according to PacBell. Centel states that telephone company responsibility for maintaining the integrity of the network outweighs any need for change in Part 68 rules concerning customer installation of inside wiring. It states that it is not aware of the present requirement for a carrier-installed jack at the network interface imposing any unnecessary costs or burdens on its customers. GTE states that if the Commission wants to provide greater flexibility in the rules it could make the jack installation issue one for local determination instead of a federal requirement. This would be a more moderate approach, permit flexibility, and allow each state and carrier to meet its local needs, states GTE.

9. GTE, CBT, PacBell and NYNEX point out that many telephone companies are providing jacks at the demarcation point in conjunction with a network interface device which includes a station protector and a loop testing device called the Maintenance Test Unit (MTU). The ability to remotely test the line results in cost savings that can be passed on to the customer, carriers state. GTE states that if the customer installs the jack at the demarcation point, it would not necessarily have the MTU. NYNEX states that the Commission should facilitate installation of jacks associated with MTUs by continuing to require that connections to the network be only through carrier-installed jacks.

10. GTE states that if customers are allowed to install a jack at the demarcation point it should only be pursuant to the conditions proposed in comments by the Telecommunications Industry Association (TIA).[11] NYNEX states that the Commission should require that a jack be installed at the demarcation point regardless of who is allowed to install it before the customer attempts any premises wiring. The Commission should also require that the jack or interface device be electronically compatible with the telephone network and have remote testing capability, NYNEX contends. NYNEX states that the device should additionally be subject to uniform requirements, although some flexibility for local standards should be allowed. According to NYNEX, the customer should be required to install a jack at the demarcation point where there is no carrier-installed jack. NYNEX additionally argues that customers should not be permitted access to wiring that serves other customers. In multi-tenant build-

ings carrier-installed Intrabuilding Network Cable and Network Terminating Wire jointly serve many customers. Permitting access to such wiring could jeopardize the security and privacy of all tenants, NYNEX contends. Customers should not be allowed to install plug/jack arrangements where access to such wiring is involved, it states.

11. The Wisconsin Public Service Commission (Wisconsin) states that in state orders authorizing the detariffing of simple inside wiring, telephone companies in Wisconsin were ordered to install a jack for each customer, in most cases without charge, in order to provide a physical point of interconnection between customer provided facilities and the telephone network. Customers without a jack at the demarcation point experiencing problems from inside wiring are able to receive a service call and installation of a jack without individual per customer charge. It suggests that in Wisconsin, therefore, there is no need to allow customers to install a jack at the demarcation point. While the Commission in the *Notice* stated that adherents of the existing rule would need to demonstrate the likelihood of network harm from customer installation of the demarcation point jack, Wisconsin believes it is the Commission that will need to submit evidence warranting the proposed policy reversal. Wisconsin states that there have not been significant industry or customer changes warranting the policy reversal. Wisconsin believes that the private benefits from increased access have not been shown to clearly exist or outweigh the public detriment of the proposals in the *Notice*. Wisconsin recommends that the Commission consider specific exemptions for customer installation of jacks at the demarcation point instead of wholesale removal of the restriction. It states that in Wisconsin vendors can receive training from the carrier on installation of jacks at the demarcation point. There are sound reasons for vendor exemptions, it states, and this policy has been successful in Wisconsin.

12. Siecor Corporation (Siecor), a producer of fiber optic products, states that as fiber to the home becomes a reality, the stability of the point of demarcation will become increasingly important. The Commission proposals to allow the customer to install a jack at the demarcation point and/or to access the protector are likely to introduce confusion making it unnecessarily costly for carriers and customers to identify responsibility and to correct equipment problems. Demand for new products is likely to be stifled, Siecor speculates. It claims that there is inconclusive evidence of the need to alter current demarcation point practices. Siecor urges the Commission to refrain from introducing changes to the demarcation point plan unless clear evidence emerges from the record in this proceeding that a revised plan will better promote Commission policy goals. In particular, it encourages the Commission to consider the goal of Section 7 of the Communications Act and whether the proposed changes might create a public detriment by discouraging current and future uses of public networks.

13. Several carriers and other parties support, or do not object to, the Commission's proposal to allow customer installation of a plug/jack arrangement at the demarcation point provided certain conditions are met. Thus, Southwestern Bell Telephone Company (SWB) states that it supports in principle the Commission's proposal to allow customers to sever carrier-installed inside wiring and install standardized jacks because it would permit a customer or his agent to adapt inside wiring to that particular customer's needs without carrier involvement. This could result in potential cost savings and convenience to the public provided the connections are made in a safe and effective manner so as to avoid service interruptions, service calls, network harms, and unsafe conditions. In order to mitigate these problems, SWB states that customers should be advised and/or required to use only Subpart F jacks, that the connection between the jack and inside wiring be firmly affixed to the contact clamps or screwdown posts and that bare wire ends do not overlap, that the newly installed jack be firmly affixed to a support, that the existing ground wire be undisturbed, and that they should contact the carrier in advance if there is any question as to the location of the network interface. Mountain States Telephone Company, Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (Mountain States) support giving customers the option of installing a jack at the demarcation point for the reasons stated by the Commission. However, Mountain States urges that the rule revisions not encompass complex wiring. Southern New England Telephone Company (SNET) supports installation of a jack at the demarcation point by customers with several qualifications: they should be installed in close proximity to the protector and in an accessible location to telephone company personnel so that the carrier will be able to connect the network to the customers' wiring; the telephone company must retain the right to install demarcation point jacks either in new installations, at the request of the customer or to use new technologies such as MTUs; and access to the protector must be reserved to the telephone company.

14. Contel Corporation (Contel) also agrees that the customer should be allowed to install the demarcation point jack provided certain conditions are met: the maximum distance from the protector should be specified in order to provide the carrier reasonable access to the jack and to minimize the length of wiring from the protector, and the customer must not have access to the protector. If the carrier provides a wire running from the protector, states Contel, which the customer could splice into to attach the jack, there would be no reason for the customer to access the protector. The Bell Atlantic Telephone Companies (Bell Atlantic) agree with the Commission's proposal to allow customers to install a jack at the demarcation point.

15. BellSouth Corporation (BellSouth) states that there is no apparent reason to deny customers the right to sever carrier-installed wiring and install their own jacks. BellSouth has several reservations, however. Customer-installed jacks should not be characterized as network interface jacks, BellSouth urges. This is because the demarcation point jack has long been regarded as a component of the regulated network and carriers should not be required to maintain the customer-installed jack. The Commission's objective can be attained without rule changes that dictate or imply that a jack at the demarcation point is synonymous with customer-installed jacks. In addition, customers should not be allowed to access wiring that serves other customers such as in multi-tenant situations. The Commission has not proposed to allow access to wiring on the carrier's side of the demarcation point or to intrabuilding network cable or network terminating wire. Allowing access to such wiring would jeopardize the security and privacy of all tenants, according to BellSouth. Finally, while severing carrier-installed wiring

for one and two-line services does not represent a probable threat to the network or the individual, some potential for personal injury does exist, states BellSouth.[12] For this reason, consumer guidelines should be established for such wiring operations. The Commission should encourage an industry task force to formulate them which could then be issued as an industry standard or incorporated into Part 68, avers Bellsouth.

16. The United Telephone System Companies (UTS) and the Organization for the Protection and Advancement of Small Telephone Companies (Opastco), and the National Telephone Cooperative Association (NTCA) do not object to customers installing a jack at the demarcation point as long as access to the protector is not permitted. NTCA states that in some cases the protector and network interface are in separate compartments of the same housing. One compartment contains the protector and grounding connections and the other network interface plugs intended for customer access. NTCA states that there is no reason to allow the customer access beyond the interface jack intended for that purpose.

17. AT&T states that the customer should be allowed to install a jack at any point on the customer's side of the protector. This can be accomplished with little or no hazard to the customer and, if proper wire and jacks are used, with assurance of no harm to the network, AT&T states. This would greatly enhance customers' ability to install wiring in the manner and at the times they choose because they would not need to coordinate and pay for installation by the telephone company. However, states AT&T, customers cannot feasibly install a jack near the protector in multi-tenant situations and attempts to access common equipment rooms and wiring panels could affect the service and safety of other building occupants. In these situations, states AT&T, the customer's right to install a jack should be limited to locations internal to the customer's premises. Otherwise, the customer should be able to locate the jack anywhere on his side of the protector although practical considerations should prevent the customer from placing the device closer than 12 inches from the protector. Customers should not attempt to remove unused wire pairs on the protector, it states. It recommends that detailed instructions be placed in manufacturers' instructions or in material from carriers.

18. TIA believes that the original policy goals for which the Commission adopted the requirement for a carrier-installed jack remain valid. However, with the deregulation of inside wiring, TIA agrees that more persons desire flexibility in their installation of inside wiring. TIA states that it has been in the process of drafting industry standards for the installation of inside wiring in residential and light commercial applications. With the availability of standards such as these, it states, the proper instructions will be available to assist subscribers. It states that it would not object to the Commission's proposal provided the following conditions are met: (1) the rule would apply to embedded wiring only; the telephone company can replace or relocate the jack if necessary; and provides that the telephone company will provide a jack at the demarcation point for new service; (2) a jack must be installed; (3) no access to the protector is allowed; (4) the jack or network interface device must at least minimally conform to Subpart F and other local requirements; (5) the jack must be installed with caution; and (6) only after the jack at the demarcation point has been installed and tested should other wiring operations commence.

19. Metscan, Inc. (Metscan) a manufacturer of remote meter reading equipment used by public utilities to read and service business and residential utility meters by telephone, states that it has installed thousands of remote meter reading devices in several jurisdictions. It claims that New York Telephone Co., however, requires that every remote meter reading device must be installed behind a telephone company interface. New York Telephone currently charges $38 for installation of the network interface, states Metscan, which jeopardizes the economic viability of its remote meter reading projects. At a minimum, the Commission must clarify that installation of remote meter reading devices using state-of-the-art methods that do not involve cutting or severing the wire are permitted. It claims that if it is not allowed to install its devices without carrier charges it will lose more than a million dollars in new sales as a result of New York Telephone's refusal to permit spliced connections without installation of a carrier installed jack. It urges the Commission to permit liberal inside wiring connections. The North American Telecommunications Association (NATA) supports the Commission's proposal as providing users with greater access to and control over simple inside wire. Leviton Manufacturing Company (Leviton) also supports the Commission's proposal as long as jacks fully conform to Subpart F. Requiring the customer to bear the cost and inconvenience of arranging for the carrier to install a jack at the demarcation point as a precondition to enjoying the benefits of a competitive environment for inside wiring is itself anticompetitive, Leviton and GI contend.

20. Carl Oppedahl, author,[13] favors the Commission's proposal to allow customers to connect inside wiring to the network by severing carrier-installed wiring and installing a standard jack. He states that there is no additional risk to the telephone network over what is currently allowed, and that the inability of customers to install a jack in carrier installed wiring forces customers to choose between subscribing to unnecessary wire maintenance plans or to risk "needless visit" charges by the carrier when service problems are determined to not originate in the inside wiring. If the customer may install the network interface, he may test the wiring himself to ascertain if the problem is in the wiring or terminal equipment. Mr. Oppedahl urges that customers be allowed to install commercially available testable, as well as standard, interface devices.

21. The New York State Department of Public Service (NYSDPS) states that there is minimal risk of harm from customer installation of jacks at the demarcation point. In New York Telephone Company's service area the present jack requirement adds approximately $40 to the cost of inside wire installation. Implementation of the Commission's proposal, it states, would improve customers' ability to access the network, and reduce the cost of telephone facilities. Similarly, the Ohio Public Utilities Commission (Ohio) states that allowing customers to install a jack at the demarcation point would serve the public interest and is a reasonable alternative to protector access. The Commission should determine precisely where the jacks can be installed in relation to the protector in both single and multi-family installations, Ohio states. It contends that the carrier should be responsible for the wire between the protector and the interface jack because subscribers will be unable to test this wire. Subscribers would benefit through cost and time savings. In order to prevent im-

properly installed jacks, however, Ohio urges that the Commission establish explicit standards for installation and to maintain minimum materials standards. Carriers should be required, Ohio asserts, to inform customers of these standards through billing inserts. Ohio also states that because installation of a demarcation point jack in new construction requires access to the protector, customer installation of such jacks should be allowed at existing simple inside wiring situations only. It claims that carrier installation of jacks at the demarcation point at existing locations should be a deregulated activity, but remain regulated at new service locations.

22. Hackensack Water Company (Hackensack), a regulated water utility serving portions of Bergen and Hudson counties, New Jersey, states that it is in the process of installing automatic remote water meter reading devices on its customers' premises which will permit the transmission of meter information over telephone lines. Devices are installed by trained contractors and enable the utility to obtain meter information without ringing the customer's telephone. The device is connected to the customer's inside wiring on the customer side of the protector. Use of the devices enable the company to obtain meter information without the need for a visit and avoids the necessity of scheduling visits and repeat visits when the customer is not at home. Hackensack states that the cost of each installation is $137 and that if it is required to connect its devices through a carrier-installed jack the price of each installation will increase by $50, or 34%, or $7,500,000 for all its customers. It claims that this additional charge will prevent it from using automatic meter readers. It claims that carrier-installed jacks are rarely near where its meter readers need to be installed. It urges that customers or their agents be allowed to install jacks. In addition, states Hackensack, the Commission should specifically authorize standard UG bridging techniques at a convenient location on the customer's side of the protector which permits attachment of a length of wire and jack to the existing wiring. This technique is less invasive in that it does not involve severing the existing wiring, Hackensack states. This method of connection to the network is also more economical, according to Hackensack than severing wiring and installing a jack.

23. *Discussion.* A telephone subscriber has a federal right to connect to the public telephone network in ways that are privately beneficial and not publicly detrimental.[14] The public detriment which can override the customer's right of connection is "technical harm to the telephone system or economic impact which adversely affects the ability of a carrier adequately to the serve the public, or both."[15] In the absence of substantial allegations of adverse economic impact, the customer generally has a right to connect inside wiring and CPE to the network provided doing so does not cause harm as defined under Part 68.[16] In this proceeding, the record does not raise any serious question that allowing customers to access carrier-installed wiring on their premises for the purpose of connecting simple inside wiring will have an adverse economic impact affecting the ability of carriers to provide adequate service to the public. Therefore, the determination of whether to allow such access will depend on whether such access presents a substantial possibility of harm to the network. Carriers generally have the burden of showing that particular Part 68 restrictions are necessary for network protection. *Notice* at para. 12.

24. Since 1984 customers have been able to install and maintain their own inside wiring. *First Report and Order.* Neither in the pleadings nor otherwise has the Commission been made aware of any substantial network harm occurring on account of customers performing such inside wiring operations. Access to customer-installed wiring and installation of standard Subpart F modular jacks is permitted in previously approved customer wiring operations and such operations are the same in all essential respects to access to carrier-installed wiring and installation of a jack, whether it is installed at the demarcation point or at other locations. Therefore, with respect to the technical aspects of accessing wiring and/or installing a jack, we find that there is little inherent risk that a plug/jack arrangement will be installed incorrectly, or if actually installed incorrectly, that network harm would result.[17] As with other inside wiring, if the jack is incorrectly installed, then the customer may be prevented from receiving telephone service.[18] This would lead to immediate corrective action by the customer.

25. Commenters contend that allowing customers to directly access carrier-installed wiring poses a risk of access to the protector. They point out that one of the reasons cited by the Commission in requiring that inside wiring be connected to the network through a carrier-installed jack was to prevent access to the protector. We do not agree. Carriers may take reasonable steps to ensure that the protector is not disturbed. Carriers may label the protector and associated grounding, use the type of device, where appropriate, which has a protector compartment with special bolts restricting access by the customer, and provide educational and instructive mailings to consumers. Thus, carriers may terminate the network by several methods that will minimize the possibility that customers will erroneously access the protector.[19] In short, we believe carriers can readily minimize the risk that customers may inadvertently access the protector. Moreover, the current rule restricts customer options, and imposes costs on availability of useful devices and services. *See, e.g.*, comments of GI, Metscan and Hackensack. We find that any risk of harm is fully justified and outweighed by the consumer benefits of allowing customers and their agents to access carrier-installed wiring. Accordingly, we will amend Section 68.104 to delete the present requirement that CPE and inside wiring be connected to the network only through a carrier-installed jack[20] and to allow customers to connect to the network through access and direct attachment to carrier-installed wiring.

B. Demarcation Point.

26. The current demarcation point definition is set forth in Section 68.3 of the rules as follows:

> The point of interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. The network interface or demarcation point shall be located on the subscriber's side of the telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's reasonable and non-discriminatory standard operating practices.

In the *Notice* we asked interested parties to comment on the extent to which the proposal to allow customers to directly access carrier-installed wiring necessitated amendment of other rules, notably the definition of the network interface or demarcation point. *Notice*, para. 15.

27. *Comments*. BellSouth supports the current definition of the demarcation point. The Commission has recognized the need for a flexible definition of the demarcation point, it states, and BellSouth is unaware of any change in circumstances, including the Commission's present proposals, that would make a change in the definition of demarcation point desirable or necessary. SNET also states that the Commission's proposed rule changes would not necessitate any change in the definition of the demarcation point. NYNEX and PacBell also oppose any change in the definition of demarcation point. The current definition reflects a reasonable balance between carrier and customer interests, allows for flexibility, and accommodates local practices, they state. The Commission's proposals, PacBell states, might make it impossible to know where the demarcation point between carrier and customer facilities is. Wisconsin states that its orders and those of the FCC have recognized that in a detariffed environment it is necessary to have a definitive and readily discernible demarcation point to determine responsibility in the detariffed provision of inside wiring. Wisconsin states that the FCC's proposal would reverse its previous decision on the need for a demarcation point and restrictions on customer access to telephone company facilities. Removal of all access restrictions it states would make the demarcation point a nebulous, useless concept, and would create undue customer and utility personnel confusion and loss of regulatory and utility credibility. Wisconsin further avers that provision of inside wiring is clearly an intrastate offering subject to state requirements. The Commission must also assess its proposals in light of potentially preemptive features which exceed the Commission's jurisdiction, citing *Louisiana Public Service Commission v. FCC*, 106 S.Ct. 1890 (1986). It states that it has supported the detariffing of inside wiring because the FCC did not preempt state authority to recognize inside wiring as a "separable service." Comments 6. The Commission's proposals on access would redefine wiring as an inseparable service by eliminating the concept of a discernible demarcation point. This would invalidate the FCC's original premise for detariffing inside wiring, undercut states' jurisdiction over inside wiring, and leave the states adrift with no clear jurisdictional lines between inside wiring and the switched network and between federal and state jurisdiction, according to Wisconsin. Bell Atlantic states that by revision of the definition of demarcation point the Commission could effectively permit access to multi-user wiring in those states where the demarcation point is in each user's premises.

28. AT&T states that the definition of the demarcation point should be expanded to specify the plug/jack connection point as the network interface, or, absent one, the protector, or, if there is no protector, the point at which the telephone company line enters the customer's premises. It states that the present rule leaves in doubt the interface location in situations where there is no plug/jack arrangement or a protector. Ohio recommends that the Commission revise the definition of demarcation point to specifically state where a customer-installed jack can be permitted in relation to the protector. In single tenant dwellings the jack should be located as close as reasonably possible to the protector, it states. In multi-tenant buildings the demarcation point should be located such that a single subscriber cannot disrupt service to other subscribers. If this cannot be done then customer installation of jacks should not be allowed in those locations.

29. *Discussion*. The present definition of the demarcation point provides only that it will be on the customer's side of the protector as determined under the carrier's reasonable and nondiscriminatory standard operating practices. Under this definition, the carrier could establish a practice of locating the demarcation point on the customer's premises at a substantial distance from the protector. This could be, for example, at the point where CPE is connected to the network through a jack installed by the carrier leaving a substantial run of inside wiring on the customer's premises on the carrier's side of the demarcation point. As stated in the *Notice* in this docket, Part 68 restrictions should be minimally burdensome on the customer's ability to connect equipment to the telephone network consistent with protecting the telephone network from harm caused by such customer connection. *Notice* at para. 12. Carriers generally have the burden of showing that particular Part 68 restrictions are necessary for network protection. *Id*. The present definition of the demarcation point, insofar as it can prevent the customer from directly accessing carrier-installed wiring on his premises, has not been shown to be necessary for network protection. This may have been an acceptable consequence of the previous requirement that customers connect only through a carrier-installed jack based on limited experience with customer-provided inside wiring at the initial adoption of Section 68.213. However, we believe that location of the demarcation point by the carrier at a location far from where wiring enters the customer's premises is now an unreasonable practice in view of our determination on the present record that customers can without harm and without significant risk of accessing the protector directly access carrier-installed wiring. In other words, since permitting the customer to directly access carrier-installed wiring is without substantial risk of network harm, location of the demarcation point at a point which prevents access to such wiring is no longer justified.[21] Thus, our determination to allow customer access to carrier-installed wiring necessitates a revision to the definition of the demarcation point to permit the customer to access wiring at locations where there is no substantial risk of network harm.[22] In general, as long as the protector is not accessed, *see* discussion at para. 46, *infra*, we believe that direct access to carrier-installed wiring will not be harmful anywhere on the customer's premises.[23] *See* Appendix II, § 68.3., *infra*.[24]

30. In general, the revised definition of the demarcation point seeks to assure that it will not be at a significant distance from where wiring enters the customer's premises.[25] Thus, the revised definition provides, first, that in single unit situations, both new and existing, the demarcation point shall be a point within twelve inches of the protector, or if there is no protector the demarcation point shall be within twelve inches of where the wiring enters the customer's premises.[26] In existing multiunit service configurations, where, under the existing definition, the demarcation point has been determined in accordance with the carrier's reasonable and nondiscriminatory practices, the building owner may be the only customer (*e.g.*, a shared tenant services situation), or there may be several customers with all demarcation points in a single

location or group of locations, or the demarcation point for each customer may be in each customer's unit. We believe that for existing multiunit installations the revised definition should be sufficiently flexible to accommodate these existing situations. In addition, the record of this proceeding does not support a finding that access by customers to wiring, enclosures, and equipment serving multiple customers should be mandated. Accordingly, as allowed under the present rule, the revised definition of the demarcation point provides that in existing multiunit situations the demarcation point shall be determined in accordance with the carrier's reasonable and nondiscriminatory standard operating practices.[27] However, where there are multiple demarcation points, any demarcation point for a customer may not be located at a point further than twelve inches from where the wiring enters the customer's premises.[28] This will assure that each customer will have the ability to access wiring on his premises.

31. In new multiunit installations, the revised demarcation point definition provides that the carrier may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry on the property. The minimum point of entry is defined as, and may be, either (1) where the wiring crosses the property line or (2) where the wiring enters a building or buildings.[29] This will assure that the carrier is not required to provide inside wiring services where its practice is not to provide such services.[30] In the absence of a carrier practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner may determine the location of the demarcation point or points. The multiunit premises owner is not limited by, or subject to, the definition of the minimum point of entry. However, where there are multiple demarcation points, any demarcation point for a customer may not be located at a point further than twelve inches from where the wiring enters the customer's premises. These provisions will best assure that the customer, whether he or she is the multiunit property owner or a unit occupant, will be able to install inside wiring and access carrier-installed inside wiring on his premises.[31]

C. Responsibility.

32. Section 68.213(b) of the current rules provides that the subscriber is responsible for consequences resulting from erroneous wiring operations he or she performs. In the *Notice*, para. 21, we asked whether, in view of our proposal that customers be permitted to install a jack at the network interface, we should modify the provision concerning responsibility.

33. *Comments*. Commenters raise concerns about responsibility for, and/or liability arising from, jacks installed by the customer at the demarcation point. The Commission must assure that customers bear the responsibility for the cost of installation and maintenance of the jack, state NYNEX and USTA. Bell Atlantic states that if the customer is allowed to install a demarcation point jack the Commission should confirm that when the customer installs it, it is on the customer's side of the interface and that the telephone company is not responsible for maintaining it. Carriers must be able to charge for identifying and correcting, if requested, any problems associated with a customer-installed jack, states USTA. BellSouth states that the customer should be responsible for installation and maintenance of all inside wiring on the customer's side of the demarcation point including detariffed inside wiring originally installed by the carrier. Subscribers should be responsible for consequences of improperly installed jacks, contends Ohio. NYNEX states that the Commission must ensure that liability for improper installation is placed on the customer. According to NYNEX, the Commission must address the issue of consequential damages. It observes that in its proposed revised Section 68.213(b) the Commission omitted current language that "[t]he subscriber is responsible for consequences resulting from erroneous wiring procedures conducted under his or her direction." If it is necessary for the telephone company to disconnect an alarm connection, for example, in order to eliminate harm to other customers' service, it should be able to do so without liability, NYNEX states. It urges the Commission to retain the above language making it clear, according to NYNEX, that customers are responsible for the consequences of erroneous wiring. GTE states that the Commission should state who is responsible for any and all "accidents" that damage telephone company equipment, injure telephone company personnel, damage customer property, or injure or kill subscribers because of station protector grounding being rendered inoperative. According to Mountain States, any trouble associated with the customer-installed jack should be handled similarly to any other deregulated hardware, *i.e.*, on a time plus materials basis. SNET states that it should be made clear that customers are liable for any service and safety problems that they might cause. It should also be made clear that customers will be financially responsible for any costs arising from the severance of wire or installation of jacks on the network side of the interface, states SWB. In contrast to other commenters, AT&T states that following installation of the jack by the customer, the telephone company should bear responsibility for repair and maintenance of the device, since it marks the point of connection to the network.

34. *Discussion*. The Commission agrees that carriers should not be made responsible by Commission rule for maintenance of inside wiring installed by the customer, including a standard jack installed at the demarcation point. In addition, in view of our determination that the customer may rearrange, alter and remove carrier-installed wiring on his premises, it is appropriate that the carrier not be directed by the Commission to be responsible for maintenance of such wiring. However, carriers and customers should not be precluded from entering into arrangements, nor should carriers be precluded from undertaking responsibility, for installation and maintenance of inside wiring on the customer's side of the demarcation point to the extent such arrangements and undertakings are otherwise consistent with Commission requirements. Accordingly, the revised Section 68.213(b) we adopt today provides in part that:

> The telephone company is not responsible, except pursuant to agreement between it and the customer or undertakings by it, otherwise consistent with Commission requirements, for installation and maintenance of wiring on the subscriber's side of the demarcation point, including any wire or jacks that may have been installed by the carrier.

We believe that this language will fully satisfy concerns of carriers that they not be required to maintain jacks installed by themselves or by customers on the customer's side of the demarcation point.[32]

35. As pointed out by NYNEX, the proposed Section 68.213(b) did not retain the provision that the subscriber is responsible for consequences resulting from erroneous wiring operations the subscriber performs. As indicated, the Commission believes that the possibility of network harm occurring from inside wiring operations including access to wiring at the demarcation point is not substantial. In addition, the Commission has evaluated this provision and believes that it is vague and could potentially impose substantial liability on customers if it were to be used as a standard of liability by a court to adjudicate liability between carriers and customers. We believe that the issue of liability between the carrier and customers for damages to themselves or third parties should be judged under general standards for assigning liability and assessing damages, and by appropriate local authorities, who will be in a better position to evaluate the particular facts presented in any instance. However, carriers are not precluded from recovering reasonable costs entailed by customer damage to regulated network facilities and/or carrier personnel pursuant to reasonable, nondiscriminatory and otherwise lawful tariffed charges in connection with regulated service filed at the local level.

D. Access to the Protector.

36. In our earlier wiring orders we reserved right of access to the protector and grounding to the telephone companies.[33] We found that the private benefits derived from permitting customers to access the protector and its associated grounding were exceeded by the public detriment of increased risk of harm to persons and property. In view of the proposals we set forth in our *Notice*, however, we found it appropriate to revisit this analysis. We stated that while we do not necessarily intend to alter the current policy on the matter, we seek public comment on it. We asked all interested parties to reevaluate the need to reserve protector access to the local telephone companies.

37. *Comments*. The Rural Electrification Administration (REA) states that wire based circuits can become energized by dangerous voltage levels through contact with power lines, residential or business premise wiring, lightning or ground fault influence. It is imperative that the protector and associated grounding remain the responsibility of the telephone company, it states. The telephone company has the desire, training, and capability of handling grounding systems and should be the only "accessors" of the protector, states REA. Similarly, BellSouth and CBT contend that disturbance of the protector and ground wire exposes customers, equipment and the telephone network to the harmful effects of lightning and power contact. Special problems would be presented and special training would be required to access multipair protectors in multi-tenant buildings, BellSouth and NYNEX state. There are no individual station protectors in many parts of New York State dense urban areas, states NYNEX. Instead customers are protected through use of underground cables and terminal boxes which serve hundreds of customers. Allowing access to such terminal boxes or other multi-tenant wiring facilities could result in loss of service to many customers and loss of privacy and security, NYNEX and PacBell state. PacBell additionally states that allowing access to the protector would increase risk of disruption of special service such as alarm services and would allow the customer to transfer service to new locations by rearranging and connecting service wires to the protector, rendering the telephone companies records inaccurate. Centel states that as long as carriers are to be held responsible for maintaining the public network and for the integrity of the protector, it is critical that they have exclusive access to it in order to protect the network from harm or damage from electric shock, fire, lightning, power failure, or inadequate fusing.

38. GTE, PacBell and USTA state that its prior reviews of this issue the Commission has consistently found that the public detriment of customer access to the protector outweighed any public benefit. Nothing has occurred which would tilt the balance in favor of allowing access to the protector, UTS, GTE, USTA, PacBell, Opastco and BellSouth contend. GTE states that its experience is that some customers have tampered with the ground connection, caused harm to the network, and posed a safety hazard for both the customer and the telephone company. PacBell states that it receives approximately 4000 trouble reports per month concerning failure of protectors, about half of which concern protectors that been exposed to voltages in excess of design specifications. PacBell cites several instances of fire and/or damage to customer equipment and premises where the grounding of the protector had been removed. SNET states that it is not uncommon for it to encounter protectors whose operation has been inadvertently disturbed by premises owners or contractors. Carrier-provided consumer education programs will not ensure that the integrity of the protector and its associated grounding is maintained, according to USTA. SWB also opposes allowing customer access to the protector because its protective functions could be compromised if customers are permitted access. The Ameritech Operating Companies (Ameritech), Bell Atlantic, Contel, and SWB contend that customers will not need direct access to the protector in order to perform their own connections if they are permitted to sever inside wiring and install a jack. If there is a jack on the protector, SWB has no objection to the customer connecting inside wiring by means of that jack. BellSouth states that some carriers are using protector units with integrated standard jacks, combined in some instances with MTUs. In such cases, states BellSouth, there in no need for the customer to access the protector. Ameritech and BellSouth agree with the consensus view of the ad hoc working group on lightning protection sponsored by the Commission that access to the primary protector should be limited to the telephone company. SWB emphasizes that restricting access to the protector will facilitate the determination of the party responsible for service problems. Since local exchange carriers may be held responsible for providing a safe network environment, they should be assured of exclusive access to the protector. Mountain States argues that local authorities are better equipped to decide whether persons other than exchange carriers should have access to the protector. ADC Telecommunications, Inc. (ADC) states that allowing access to the protector and associated grounding would adequately protect the network and provide for public safety.

39. NYNEX states that many industry groups have stressed the importance of the protector. Bellcore studies have addressed the importance of the primary station protector.[34] The National Electric Code (NEC) Article

800-2, requires a protector on a telecommunications circuit that is exposed to accidental contact with electric light or power conductors operating at over 300 volts-to-ground. In addition, points out NYNEX, the Commission sponsored Ad Hoc industry working group on lightning protection released a report in June, 1987 that stated

> in order for the primary station protector to function properly, it must be installed correctly (especially the ground connection), and properly maintained. Proper installation of the primary station protector by the telephone company may be defeated by other parties such as the homeowner or a contractor . . . *In no case should the customer or his agent attempt to change or move the ground connections or otherwise access the primary station protector.* (Emphasis in original)

GTE urges the Commission to issue a public notice containing the information in the Ad Hoc advisory committee's report. NYNEX states that claims of injury caused by lightning have occasionally been brought against it by customers alleging injury resulting from loose ground connections of the station protector. *Lori Waldsmith v. New England Telephone*, Civ. Action No. 80-714, Sup. Ct. Mass (1981). In that case the customer was struck by lightning while using the telephone, and it was determined that the ground connection was loose at the water pipe. NYNEX fears that allowing customer access to the protector may substantially increase the incidence of injury caused by disturbance of ground connections. PacBell states that if the Commission decides to allow access to the protector, it must clarify that the carrier is not responsible for it, leaving such responsibility to be determined under local negligence and tort liability laws. However, it urges the Commission to remove carriers from general liability and to establish mechanisms for financial reimbursement to carriers for injury, harm or damage caused to them. If the Commission decides to allow access to the protector the Commission may need to first revise the definition of the demarcation point, according to Mountain States. Alternatively, it states that the Commission should insulate exchange carriers from all claims of liability resulting from their ownership of the protector and associated grounding. Contel states that allowing access to the protector would burden carriers with having to prove that injury was caused by a customer's negligence or incompetence.

40. NTCA states that it has reviewed the issue of protector access with many of its member companies and that it is their emphatic view that allowing customer access to the protector and associated grounding would create an unreasonable risk of harm to life and property and a significant increase in potential legal liability for carriers. Integrity of the protector is absolutely necessary to minimize the risk of electric shock, fire and property wire caused by telephone wiring coming in contact with electrical energy. The potential danger is too great in comparison to any marginal convenience that would be achieved by access to the protector, it states.

41. Ohio strongly urges the Commission not to permit non-carrier access to the protector because to do so would threaten the integrity of the network, and increase the probability of human injury. It opposes allowing access even to purportedly technically qualified personnel because once any access is allowed inevitably non-qualified persons will access the protector. If this were to occur, it would be difficult to assign legal liability for any damages resulting from improperly maintained protectors, states Ohio. But, states Ohio, if access is allowed clearly this should be done only for qualified persons, although that would require the Commission to determine who is to be considered qualified and how such qualifications are to be demonstrated. The Commission should consider issues of liability in cases of injury or network harm, according to Ohio.

42. AT&T states that customers should have limited rights to access the protector for the purpose of ascertaining that it is providing adequate grounding, including removing the cover and electrically testing the grounding system. The customer should also be permitted to bond the grounds of secondary protectors to the telephone company grounding electrode. This access, states AT&T, can only enhance and never diminish the effectiveness of the protector.

43. Metscan states that it has pursued in several jurisdictions the possibility of installing its devices by means of access to the protector, but that in every instance this was opposed by telephone companies and state regulators who are reluctant to rule on the issue, preferring to defer to the FCC. As meter reading devices become more widespread Metscan anticipates a need under limited circumstances to connect either inside wiring or standard interfaces to the protector as the most cost effective means of installing meter readers. It urges that the Commission permit qualified representatives of regulated utility industries to perform limited attachments and operations at the station protector. Mr. Oppedahl states that there is much to be said for minimizing the risk of harm caused by loss of grounding at the protector. He states that in most cases the customer should not need to access the protector in order to install network interface jacks. However, he urges that customers be allowed to touch the protector where this is unavoidable.

44. Leviton contends that the public interest would be better served by allowing competition in protector access. It claims that continued integrity of the protector and grounding is essential to the protection of life and property and to reduce potential network harm. Restricting access to the telephone company is totally unnecessary, however, according to Leviton. There are several other trade groups with the necessary expertise to select, place, install, and access listed signal protectors. Licensed electrical contractors, for example, are better qualified to perform electrical grounding evaluation and installation than are telephone company personnel, states Leviton. Other trade groups, such as communications wiring contractors, and NEC Class III limited energy wiring contractors, can also perform this type of work. Access to the protector should be allowed by these installation professionals, Leviton states. Hackensack also believes that at a minimum properly trained persons employed by the telephone subscriber should be allowed to access the protector. It states that in its experience most protector blocks have threaded bolts protruding sufficiently to permit the attachment of an additional wire connection and thumbnut. Thus, an additional connection can be made without disturbing the existing protector connections, Hackensack states. Hackensack urges the Commission to specifically authorize this means of access where it is available. This limited protector access by properly

trained personnel would assure network protection and is not likely to result in harm to persons or property, it states.

45. NYSDPS states that the Rochester Telephone Company has for years allowed direct access to the protector, without any evidence that this policy has caused any harm to the carrier or customers. This experience suggests that the requirement for any interface jack should be eliminated and that direct access to the protector should be allowed, NYSDPS states. There is little justification for requiring installation of an interface jack in order to avoid access to the protector, it states.

46. *Discussion*. By our decision today, customers will be able to access carrier-installed wiring on their premises up to and including the demarcation point which in most situations will be in close proximity to the protector or where wiring enters the customer's premises. While several parties have contended that qualified persons are able to make attachments at the protector, the record does not show benefits of such access over and above that which is afforded by the right to access carrier-installed wiring at the demarcation point.[35] On the other hand, while the record is not unanimous, an overwhelming majority of commenters believe there are substantial risks with providing access to the protector. In addition, as suggested by the commenters, access by customers could make very complicated assignment of responsibility for injury to a customer from the effects of entry along the telephone wires of harmful electrical pulses. We believe that it is preferable to gather experience as to whether access to the protector is necessary in light of the customer's ability to access carrier wiring at the demarcation point. Accordingly, we will not now authorize customer access to the protector. However, local authorities are free to afford additional customer options in this area. *Section 68.213 Reconsideration Order*, para. 16; *see also*, *In re Telerent Leasing Corp*, 45 FCC 2d 204, *aff'd sub nom. North Carolina Utilities Commission v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976). If local conditions show benefits in allowing access, such as by electrical or communications wiring professionals, then states and other local authorities are not precluded from allowing access to the protector. *Id*.

E. Extraordinary Procedures.

47. Section 68.213(g) authorizes the telephone company to take certain steps, referred to as extraordinary procedures, to protect the network from harm when there is a violation of Part 68, a failure during testing of newly installed wiring or when harm has actually occurred. These extraordinary procedures include monitoring or participating in testing, requiring the use of protective apparatus, and a right of inspection of wiring including removal of all wiring installed behind walls and within ducts. In the *Notice* the Commission proposed to delete extraordinary procedures and modify Section 68.108, which authorizes the telephone company to discontinue service when CPE causes harm, to authorize the carrier to also discontinue service when customer-installed wiring causes harm.

48. *Comments*. BellSouth opposes the proposal to delete the provision for extraordinary procedures (Section 68.213(g)) that permit telephone companies to test and inspect customer wiring and instead to modify Section 68.108 to allow for termination of service if harm occurs because of inside wiring installation. BellSouth states that it is inadequate protection to allow termination of service only when harm has occurred. Imminent harm to the network should also be protected against, it avers. It also claims that the fact that extraordinary procedures are rarely invoked shows that they are not unduly burdensome. The burden of proving that the rule is restrictive and burdensome should be on parties who advocate deletion of the rule, according to BellSouth. GTE opposes elimination of the provision for extraordinary procedures unless Section 68.108 is modified to allow the carrier to initiate "preemptive" measures. Section 68.108 is used after harm has occurred, GTE states, "like locking the barn after the horse is stolen." It states that the carrier should have the right to require the customer to comply with applicable regulations before activation of the circuit if any fault is found during testing or through inspection. NYNEX states that its use of extraordinary procedures is very rare; but, under a "do it yourself" policy of installation of standard jacks at the demarcation point and access to the protector the need for network protection increases. If the Commission adopts such a policy, Section 68.213(g) should be retained, NYNEX states. PacBell also supports retention of extraordinary procedures. These are used primarily as leverage in negotiations when degradation of service occurs and when the customer and the vendor do not take action or work with the carrier to reduce the harm, it states. AT&T supports retention of extraordinary procedures because telephone companies have an implicit right to protect the network when harm is imminent. The rule provides guidance to the scope of this right, AT&T states.

49. SWB states that it rarely invokes the extraordinary procedures of Section 68.213(g). SWB and Mountain States support the Commission proposal to modify Section 68.108 to make it applicable to situations in which harm is caused by inside wiring operations. SNET supports deletion of extraordinary procedures; the proposed modification to Section 68.108 would be sufficient to protect against harm, its states. CBT states that it does not oppose the proposed changes to Sections 68.213(g) and 68.108. TIA states that it does not object to the Commission's proposals in these areas; however, it observes that if the testing requirement is retained, as it recommends, then the likelihood of harm actually occurring requiring recourse to disconnection of service is negligible. Bell Atlantic states that it does not object to elimination of extraordinary procedures, but that telephone companies should retain access to the premises to physically disconnect service where necessary to avoid network harm. Similarly, Hackensack states that the right to temporarily discontinue service is sufficient to protect against network harm without need for extraordinary procedures. UTS also supports the Commission's proposed modification to Section 68.108 since improperly installed wiring can cause harm to the network. Contel states that the extraordinary procedures have outlived their usefulness and should be deleted, provided that Section 68.108 is modified as proposed.

50. *Discussion*. Experience has verified the Commission's initial determination that customer installation of inside wiring does not pose a substantial risk of network harm; the Commission has not been made aware that customer provision of inside wiring has resulted in any network harm as defined in Part 68. In view of this experience, we believe that the provision for extraordinary procedures beyond those used in the case of CPE is more

burdensome than is justified by the small risk of harm. For example, the right of carriers to require removal of wiring from finished walls could be extremely expensive to customers. Moreover, most carriers state they rarely if ever use extraordinary procedures. None has provided any specific examples where use of extraordinary procedures has been necessary.

51. However, carriers should have recourse to protect the network from harm when it actually occurs. While most carriers feel that the proposed modification to Section 68.108 would be adequate in this regard, others claim that they should also be allowed to discontinue service when harm is imminent. We do not believe that it will be unduly burdensome or unfair to customers to allow carriers to discontinue service when carriers reasonably believe that harm as defined in Part 68 is imminent. We believe that with this modification, the right of the carrier to discontinue service when harm occurs or is imminent will be fully adequate to protect against harms arising from inside wiring operations authorized by our decision today. For these reasons, we will eliminate the provision for extraordinary procedures and will modify Section 68.108 as discussed above.

F. Manufacturer's Attestations.

52. Section 213(c) of the rules requires that wire used for simple inside wiring have insulation around each conductor with a 1500 Volt breakdown rating. This requirement was adopted because inadequately insulated wire if it comes in contact with high voltages has the potential to cause severe harm to the network, to carrier personnel, and the customer. Our *Notice* solicited comment on the continued need for this section.

53. *Comments*. USTA urges retention of the material and attestation requirements for inside wire because inadequately insulated wire poses a risk of safety to persons and of harm to the network. SWB, BellSouth, GTE and USTA contend that the attestation requirement should be retained because it is not a substantial burden and/or results in higher quality products and fewer service calls. PacBell supports retention of the attestation requirement because compliance with insulation requirements helps prevent injury to customers. Bell Atlantic states that there is no reason to eliminate the requirement, and that customers benefit from manufacturers' assurance that the wire meets minimum Commission standards. Contel states that at the very least carriers should be able to know that proper materials are available for customer use, and supports retention of the attestation requirement. UTS states that the attestation requirements are reasonable and that customers and carriers should have reasonable assurance that wiring is adequately insulated. SNET states that it has experienced customer service problems because of use of substandard wire and that the use of such wire is common. Instead of proposing elimination of attestation requirements, the Commission should be supporting additional public education efforts. CBT supports retention of the attestation requirement; the attestation list is the only way for it to determine if a brand of wire meets Part 68 requirements, CBT states. TIA states that it is unaware of any problems with the attestation requirements, which should be retained. It states that the Commission may wish to consider additional restrictions for wire such as longitudinal balance criteria which can cause crosstalk and imbalanced circuits on data channels which are not self-correcting.

54. AT&T states that elimination of the attestation requirements would undermine the Commission's goal of enhancing customer options without jeopardizing the network. The attestation requirements relate to significant and necessary technical requirements, it states. Insulation requirements, for example, prevent potentially severe harm to the network, carrier personnel and the customer. Free market forces should govern the sale of inside wiring, but free market forces cannot be relied upon to establish and maintain the technical standards which assure that inside wiring will not harm the network. AT&T also urges that attestation requirements be made applicable to cords, passive adapters and other devices exempt from registration under Section 68.200(h). Leviton states that the material and attestation rules are inadequate. It is inconsistent to enforce rigid mechanical and electrical performance standards for jacks, it states, while allowing wiring of every possible configuration, color code, quality and electric performance characteristics. Since gauge requirements are not enforced, under gauge wire is produced resulting in poorly operating ringers, noisy insulation and other harm to overall network integrity and performance. Leviton requests that the Commission require simple inside wire manufacturers to attest that it complies with National Electric Code, Article 800 3(b) and that it is listed by a recognized national testing laboratory under applicable standards for communications wiring. BellSouth, PacBell, and GTE additionally support AT&T's proposal to require attestation of compliance with leakage current specifications and temperature/humidity tolerances for cords and passive adapters. Substandard material should be eliminated from inside wiring operations, they state. Attestation procedures benefit the consumer, NYNEX states. The burden on the manufacturer is minimal and consumers are assured that inside wire will not cause cross-talk or other system imbalance. GTE states that if the Commission decides to eliminate the attestation requirement, it may wish to impose a labeling requirement, or compliance with an industry standard and may wish to impose a longitudinal balance requirement because many circuits are now carrying data.[36]

55. *Discussion*. As noted, the materials requirements of Section 68.213(c) were adopted because inadequately insulated wire coming in contact with high voltages has the potential to cause severe harm to the network, to carrier personnel and to the customer. *First Report and Order*, para. 73. The attestation requirement of Section 68.213(d) is intended to assure that inside wiring will meet the material specifications of Section 68.213(c). In response to the *Notice*, no manufacturer has filed comments urging elimination of the attestation requirement. The record in this proceeding does not otherwise demonstrate that the attestation requirement does not continue to be reasonably related to, and necessary for, network protection. Accordingly, we retain the attestation requirement for inside wire.[37]

56. AT&T, supported by several commenters, requests that an attestation requirement be adopted for cords and passive adapters. At the present time cords and passive adapters are required to comply with the leakage current specifications of Section 68.302(b) and the temperature/humidity tolerances of Section 68.304(a), but no attestation of compliance is required. Telephone wire on the customer's premises carries a somewhat greater risk of network harm than do extension cords and passive adapters in that wire is frequently concealed behind walls

making relatively difficult diagnosing and correcting any electrical problem originating from the inside wire. Defects in cords and passive adapters, by contrast, are readily observable, and a defective device is easily replaced. The relatively greater possibility of network harm from inside wire, and the lesser possibility from cords and passive adapters, has accounted for the attestation requirement for inside wire but not for cords and passive adapters. *First Report and Order*, para. 76. The arguments by commenters in support of an attestation requirement for cords and passive adapters are conclusory and unsupported and do not persuade us that the Commission's reasons for declining to adopt an attestation requirement when it last addressed this issue are no longer valid. Accordingly, we reject the request for an attestation requirement for cords and passive adapters.

G. Acceptance Testing.

57. Section 68.213(f) requires customers to test wiring installations and, if failure results, to disconnect their wiring from the network. In our *Notice* we suggested that consumers and telephone companies are now generally aware that it is advisable to test an installation to see if it is correctly installed and that the requirement of Section 68.213(f) may no longer be needed. We sought comment on that suggestion.

58. *Comments*. GTE and SNET state that acceptance testing requirements are not burdensome, require no special training or equipment, are a matter of common sense and should be retained. GTE is willing to cooperate in acceptance testing, it states. Acceptance testing assures that wiring errors will be corrected immediately before the installer leaves, SNET states. Bell Atlantic states that the rule should be retained as a reminder to installers to test. AT&T states that acceptance testing performs a useful function and should be retained. The Commission should additionally encourage manufacturers to include instructions for acceptance testing, AT&T states. BellSouth, Mountain States and Hackensack support elimination of the requirement that the customer test inside wiring installations. BellSouth states that there does not appear to be sufficient justification to mandate testing or to monitor compliance. Mountain States contends that customers have shown little interest in the need for such testing and and the rule is difficult to enforce. Hackensack emphasizes that its installers do and will test each installation. UTS agrees with the Commission's assessment that consumers are aware of the need to test inside wiring installations and has no objection to the deletion of the acceptance testing requirement. ADC states that the testing requirement should be deleted because customer premises wiring is most efficiently installed over a period of time as the building is being constructed before there is an opportunity to test it.

59. *Discussion*. We believe that consumers will test wiring installations without a Commission rule requiring that they do so. While commenters are correct that the rule mandating testing is not burdensome in that customers will test anyway, it is preferable to remove unnecessary regulations. In addition, faulty wiring operations will frequently render inoperative the customers' telephone service or affect quality of service, thereby creating an incentive for disconnection or correction of the faulty wiring. Moreover, we have in this decision determined to modify Section 68.108 to allow carriers to discontinue service when harm occurs or is imminent. We believe that this will afford the carrier adequate protection in the event that wiring should actually cause harm. For these reasons, we conclude that the requirement for testing is unnecessary for network protection and remove it.

H. Notification.

60. Section 68.213(e) requires customers, upon request of the carrier, to provide the carrier with a description of the location of jacks installed, a statement that building and electrical codes are being complied with and information on the wiring employed, among other information. In our *Notice* we did not advocate modification or elimination of this rule, but we did solicit comment from carriers as to whether they still find it useful, particularly if our other proposals are adopted.

61. *Comments*. SWB, SNET, PacBell and GTE concur with the Commission's initial determination to maintain Section 68.213(e) that provides that a carrier can require the customer to furnish information of inside wiring installed on the customer's premises. This will enable the carrier to ascertain whether inside wiring may be causing network harm, they argue. The location of a standard interface installed by the customer particularly must be available to the carrier, SNET states. BellSouth does not oppose elimination of the Section 68.213(e) notification requirement. It does not require notification and it believes that routinely requiring notification could inhibit customers from installing their own inside wiring. UTS states that the notification requirements are reasonable and should be retained. Mountain States states that it takes no position on this issue. While the rule is unobtrusive, it states, it is of little value in that in its experience customers will not become more cooperative about disclosing information on inside wiring, which is rarely asked, when they are advised that a Commission rule mandates their cooperation. Bell Atlantic states that it rarely if ever finds the need to ask for the information covered by Section 68.213(e) and therefore does not oppose its elimination.

62. *Discussion*. Under our revised Section 68.108 carriers will be able to temporarily discontinue service to a customer where harm has occurred or where the carrier reasonably believes that harm is imminent. Carriers supporting retention of the existing mandate under Section 68.213(e) that the customer provide inside wiring information to the carrier upon request have failed to show what, if any, additional protection that section provides in light of the revised Section 68.108. Further, the requirements of Section 68.213(e) could be potentially burdensome on customers depending on the manner invoked by carriers. This potential burden outweighs the minimal network protection Section 68.213(e) could provide in light of the additional protection provided under the revised Section 68.108. Accordingly, we will eliminate Section 68.213(e).

I. Gold Equivalency, Plug, Jack Requirements.

63. Section 68.104 requires that all connections to the telephone network be made through the standard plugs and standard telephone company provided jacks, or equivalent, described in Subpart F. Subpart F, in turn, provides that the plugs and jacks described therein "represent the standard connectors to be used for connections to the telephone network." In the *Notice* we sought comment on EIA's concern expressed in its petition for Rule Making that Section 68.104 could be interpreted to require that

only the jack at the network interface conform to these technical specifications. We also sought comment on the meaning of "or equivalent" in Section 68.104, and specifically asked that carriers and manufacturers provide clearly defined technical alternative specifications to gold, if feasible.

64. *Comments.* BellSouth, AT&T, SNET, CBT, GTE, PacBell, USTA, NTCA, Leviton, ADC and Centel urge adoption of EIA's amendments making all jacks used in inside wiring, not just the jack at the network interface, conform to Subpart F. UTS states that it agrees with the Commission's assessment that all jacks must conform with Subpart F, but sees no harm in clarifying the rules in this regard. Hackensack states that all materials used in connection with inside wiring should conform to Part 68. The potential risks of network failure and degradation of quality of service warrant the change, Centel asserts. NTCA proposes a modification to the EIA amendment which would make it clear that it applies to inside wiring installed by the customer. Leviton asserts that enforcement mechanisms must be in place where manufacturers fail to comply because the general public is unable to determine compliance. PacBell states that as new network systems are developed such standards will be essential to efficiency and safety. GTE states that it is puzzled, however, by the Commission's statement in the *Notice* that the premise of the TIA petition that inside wiring need not conform to Subpart F was incorrect. GTE points out that the *Order*, 50 Fed. Reg. 27250 (1985), which specified revised Subpart F standards failed to specify a date on which the revised technical Subpart F specifications were to apply. GTE states that it is not clear what technical specifications are mandated especially since the *Order* states that alternative jack designs may be used. GTE states that the minimum date for plugs and jacks to conform with new standards is six months after the order becomes final. The date should apply to manufacture, not to sale or installation, it argues.

65. Mountain States argues that the Commission should not expand the scope of Part 68 to require customers to use Subpart F jacks for all connections within their premises wiring. It contends that the network harms alleged by EIA in its petition for Rule Making do not warrant requiring all jacks to conform to Subpart F; the EIA proposal is simply not necessary to protect its network from harm, according to Mountain States. It agrees that conformance with Subpart F may assure a higher quality of service, but that Part 68 was designed to protect against network harm, not assure performance. Moreover, by deregulating inside wire the Commission has already determined that it is the customer who should have the right to decide what kind of hardware to use in connection with his inside wire.

66. BellSouth, and AT&T state that the gold equivalency option should be deleted until such time as the industry identifies a material that can effectively perform as a functional equivalent of gold. AT&T states that while it has previously supported efforts to find a less expensive alternative to gold, it has concluded that a gold-only standard will ultimately prove less expensive and provide greater assurance of reliable communications service. Improved designs make it possible for manufacturers to meet the gold requirement using ninety percent less gold than when the rule was adopted, according to AT&T. AT&T points to other factors that favor a gold-only standard such as incompatibility between different "equivalent" compounds and/or gold connections. Bell Atlantic supports the AT&T position because it is unaware of any other materials with the conductive properties of gold; other materials could introduce static or noise on the line, it states.

67. GTE states that the gold equivalency option is vague and ill-defined but supports its retention until EIA Committee TR-41.9 defines the equivalent functionality to gold. ADC also urges retention of the gold equivalency alternative until the EIA Committee adopts a standard. PacBell states the option for gold equivalency should be retained to maintain flexibility, that it is very important that any alternative contact material meet the functional standards, and that appropriate industry bodies such as EIA Committee TR-41.9 and Bell Communications Research should be referred to for such standards and specifications. Virginia Plastics Company (VPC) states that the standards set by Subpart F should permit technological improvements to take place without requiring Rule Making approval. It urges retention of the gold equivalency option. Dupont Electronics (Dupont) states that the "or equivalent" language should remain in Subpart F. It states that materials or material systems are now available for contact surfaces which perform as well as or better than gold platings in applications where corrosion resistance, fretting and wear are dominant considerations. Dupont has submitted a technical description of GXT, a coating system developed by Dupont, including test results by independent laboratories, purporting to show that this product performs as well or better than gold. However, Dupont believes that the equivalency standard should be clarified. It has participated in the EIA TR-41.9 Committee to define equivalency in this regard, and elimination of the possibility of material equivalent to gold would negate the efforts of this committee. Anomet Products, Inc. (Anomet) states that there are many possibilities for gold equivalents and that two are used extensively for gold equivalence: diffused gold palladium silver, and W.E. 1 alloy. These materials represent viable, currently available gold equivalents which meet Part 68 requirements. Accordingly, the "or equivalent" language should be retained, argues Anomet. Anomet also states that TIA's proposed definition for gold would be applicable only to gold electroplating. Electroplating is not the only way to apply gold, Anomet states; metallurgical bonding through cladding is also often used. It argues that the definition of gold should be broadened to make clear that other gold application technologies are acceptable. Anomet submits technical studies in support of its contentions.

68. *Discussion.* Section 68.104 has, since the adoption of Part 68, required that connections to the network be through carrier-provided Subpart F plug/jack arrangements. Subpart F specifications have thus constituted a legally mandated definition of the network interface provided by the carrier. Subpart F specifications have assured a uniform nationwide interface available for interconnection of customer-provided equipment. While the Commission is now allowing customers to connect to the network by direct access to carrier-installed wiring, differing carrier-installed plug/jack arrangements at the demarcation point makes possible discrimination in technical interconnection arrangements which Part 68 has sought to prevent. Accordingly, the Commission will not depart from requiring that carrier-installed plug/jacks at, or constituting, the demarcation point conform to Subpart F.

69. The further issue, however, is whether plugs and jacks installed by the customer must conform to Subpart F.[38] A customer attempting to install a non-Subpart F plug into a Subpart F jack could cause mechanical damage to the receiving jack. In the case of a carrier-installed demarcation jack, the impact would constitute harm within the meaning of § 68.3(g).[39] Therefore, requiring customer-installed jacks to conform to Subpart F promotes and would assure that this network harm would not occur. Further, no convincing claim has been made that permitting use of other than a Subpart F style connector would provide significant public interest benefits. Indeed, all registered terminal equipment used with simple inside wiring is registered and marketed with Subpart F plugs. Deletion of the requirement for Subpart F compliance where plugs and jacks are used for premises wiring operations could adversely affect connectibility of existing, registered terminal equipment. Nor have Subpart F specifications been alleged to be burdensome. In view of the fact that nonconforming jacks could cause damage to telephone company installations and that there are not, on this record, significant public interest benefits from allowing non-conforming jacks, we believe that on balance that use of conforming jacks should continue. Accordingly, revised Section 68.213(b) provides that all jacks used in inside wiring shall conform to Subpart F.

70. GTE contends that it is not clear when, or if, Subpart F specifications are applicable because, *inter alia*, the *Order*, *supra*, setting forth revised specifications, did not mandate a date at which newly installed jacks would be required to conform to the revised specifications. To clarify the status of Subpart F specifications, and based on the record established in this proceeding, we will require that all plugs and jacks placed in service on or after January 1, 1991 conform to Subpart F specifications of the *Order*, 50 Fed. Reg. 27250 (1985). While some commenters have contended that nonconforming jacks are in use, it has not been shown that such jacks have caused any significant network harm or that their use is widespread. Accordingly, we allow jacks not conforming to Subpart F, either as set forth in the *Order* or as Subpart F existed previously, to remain in use indefinitely and to be newly connected up to December 31, 1990.

71. The record in this proceeding does not provide a basis for specifying an equivalent to gold for use on contact interfaces in plugs and jacks. However, the Commission does not wish to foreclose the option of using alternative materials. Subpart F states that "design innovation and improvement is expected", and we believe that it will be most consistent with this goal to retain the option for gold-equivalent contact materials. However, to provide more options in this area, we agree that it would be appropriate for private organizations to define a standard for one or more equivalent materials prior to a final Commission establishment of gold equivalency for purposes of complying with Subpart F. We believe that EIA should continue its deliberations in this area with an objective of reaching a recommended standard of gold equivalency for submission to the Commission. We are requesting that EIA submit to the Commission by June 30, 1992 proposed technical specifications for an equivalent material to gold for use in meeting Subpart F specifications, and prior to that time to submit semi-annual progress reports. The first report should be submitted six months from the date of publication of a summary of this decision in the Federal Register. The Commission can offer this proposed alternative for comment and ascertain whether it should be incorporated into Subpart F. In the meantime, we will retain the option for equivalent materials in Subpart F. While equivalency is unspecified, the Commission has not been informed that this has created any significant problems.

J. Accounting Requirements.

72. In our *Notice* we requested comment on whether the changes we were proposing to Part 68 would require changes in our accounting rules.

73. *Comments*. BellSouth states that unless the Commission changes the definition of demarcation point, there will be no need to alter any of the accounting rules. NYNEX states that if the Commission allows access to the protector, investment which is currently classified as "house and riser cable" could potentially be reclassified as "inside wire." The former is currently recorded in Account 2421, states NYNEX, and is depreciated over 20-24 years by NYNEX. If reclassified as inside wire, this investment would be transferred to Accounts 2321 and 3100 and amortized over the remaining amortization period for the station connection account. This would cause a substantial increase in revenue requirements, NYNEX states.

74. *Discussion*. Under the revised definition of the demarcation point, in single unit applications, the demarcation point will be located within twelve inches of the protector or within twelve inches of where wiring enters the customer's premises. In existing multiunit installations, where there is a demarcation point for each of several customers, the demarcation point must be within twelve inches of where wiring enters each customer's premises. The revised definition will effectuate a change in the demarcation point where carriers have not established the demarcation point in accordance with the revised definition. As indicated, the demarcation point has served for both establishing the permissible points of connection by customers of wiring and CPE and for accounting purposes. The appropriate accounting treatment and regulatory status of wiring activity by the carrier on the customer side of the revised demarcation point will be addressed in connection with the Commission's deliberations concerning *NARUC v. FCC*. We do not address those issues here. *See* notes, 10, 25, *supra*. As the Commission is not here authorizing access to the protector and house and riser cable, we need not discuss NYNEX's contentions on those points concerning accounting changes. The amendments to Part 68 made herein do not require any changes in our accounting rules.

K. Network Disclosure.

75. IDCMA states that the Commission should require local exchange carriers to more fully disclose their standard operating practices. Section 68.3 of the Rules, 47 C.F.R. § 68.3, it observes, states that "[t]he network interface or demarcation point shall be located on the subscriber's side of the telephone company's protector . . . as provided under the local telephone company's reasonable and nondiscriminatory standard operating practices." If customers are allowed to install the network interface jack, IDCMA states, it will be essential for them to know the telephone company's standard operating practices so that the jack is properly located. IDCMA claims that in any event this information is required under the Commission's network disclosure rules.[40]

76. While carrier standard operating practices concerning location of the demarcation point affect customers' ability to connect inside wiring and CPE to the network, the record in this proceeding does not warrant any finding that customers' rights in this regard are being hindered or thwarted because carriers are failing to disclose sufficient information concerning location of the demarcation point. Other than generalized allegations, IDCMA has not presented any concrete evidence that consumers are unable to fully exercise their right to install inside wiring because of lack of information on telephone company standard operating practices that can affect inside wiring. The Commission takes official notice of current telephone company provided information to customers on their rights to install inside wiring.[41] In addition, in contrast to the present rule cited by IDCMA, in many situations the revised definition of the demarcation point will specify its location with particularity. Thus, the revised definition presents reduced ground for concern that undisclosed carrier practices may make it difficult for customers to know where they can access wiring. For these reasons, an affirmative Commission direction that carriers disclose standard operating practices that may affect location of the demarcation point, or a rule to that effect, has not been shown to be necessary at this time. However, the Commission stands ready to reexamine this area if necessary either by Rule Making or consideration of a complaint. As indicated by IDCMA, the existing disclosure requirements have been broadly interpreted. In addition, the Commission expects carriers to continue to develop and submit to their subscribers, residential and business, informational brochures, or to otherwise provide information such as in telephone directories and billing inserts, describing the rights of subscribers to perform inside wiring operations, including those established in this *Report and Order*. We further expect carriers at the request of customers to provide complete information on customer's rights to install inside wiring and to fully disclose their standard operating practices concerning location of the demarcation point.

IV. NOTICE OF PROPOSED RULE MAKING.

77. GTE states that is has participated in the development of the TIA/EIA draft standards "Residential and Light Commercial Premises Wiring for Telecommunications Products and Services Utilizing One to Four Exchange Access Lines." It states that the marketplace has changed and that simple wiring installations realistically now include more than one or two lines. The Commission should update its definition, GTE avers. TIA states that its proposed standards for residential and light commercial wiring applications covers wiring up to four exchange access lines. In its experience, wiring methods do not change significantly until more than four lines are used. TIA also urges the Commission to update its definition of simple or non-system wiring to encompass up to four lines without common equipment, whether for residential or business use. AT&T states that Section 68.213 regulation should be made applicable to all wiring not located electrically behind apparatus which protects against hazardous voltages and imbalance, not just one and two-line installations. ADC states that it has no objection to the TIA proposal to redefine inside wiring to include up to four exchange access lines, whether for residential or business use, provided that the lines in question are exchange access lines. The definition of simple wiring should not include lines from common equipment, such as a PBX, to the subscriber's premises, that is, for example, from common equipment at a building to shared tenant services connections, according to ADC.

78. Expanding the scope of Section 68.213 to encompass wiring up to four lines would significantly reduce regulatory requirements for customer installation of 3 and 4 line wiring. No party has suggested that making installation of three and four line wiring subject to the less stringent requirements of Section 68.213 instead of those of Section 68.215 for more complex wiring poses any significant risk of network harm or administrative difficulty.[42] Accordingly, we are persuaded that expanding the scope of Section 68.213 in this regard would eliminate unnecessary regulatory requirements and increase consumer options while not presenting any substantial risk of network harm. Therefore, the Commission is providing notice of proposed Rule Making to expand the scope of Section 68.213 to encompass wiring up to four lines. The Commission also solicits comment on AT&T's request that Section 68.213 include any wiring not located electrically behind protective equipment. If warranted the Commission may modify Section 68.213 in that regard.

V. REGULATORY FLEXIBILITY ACT CERTIFICATION

79. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 605, it is certified that the amendments of Part 68 of the Commission's rules, 47 U.S.C. Part 68, adopted or proposed in this *Report and Order and Further Notice of Proposed Rule Making* will not have a significant impact on small entities because the amendments will only remove regulatory requirements for inside wiring operations performed by small entities and do not create any additional regulatory requirements for inside wiring operations performed by small entities.

VI. EX PARTE PRESENTATIONS

80. For purposes of this non-restricted notice and comment Rule Making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1), if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any person who submits a written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public

record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a written memorandum to the Secretary (with a copy to the Commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

81. The Secretary shall cause a copy of this *Report and Order and Further Notice of Proposed Rule Making*, including the Regulatory Flexibility Certification, to be sent to the Chief Counsel for advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a) (1981). The Secretary shall also cause a summary to appear in the Federal Register.

82. In accordance with the applicable procedures set forth in Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, interested parties may file comments on or before **August 13, 1990** and reply comments on or before **September 10, 1990.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and provided that the Commission's reliance on such information is noted in the Report and Order.

83. Interested parties shall file an original and 5 copies of all comments, replies, or other documents. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the public who wish to express their interest by participating informally in the Rule Making proceeding may do so by submitting one copy of the comments provided that the docket number is specified in the heading. All filings in this proceeding will be available for public inspection by interested persons during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C. For general information on how to file comments, parties should contact the FCC Consumer Assistance and Information Division at (202) 632-7000. For further information contact Patrick Donovan (202) 634-1832.

VII. ORDERING CLAUSES

84. Accordingly, pursuant to Sections 1, 4, 201-205, 215, 218, 220, 313, 309(e)-(h), 405 and 412 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 201-205, 215, 218, 220, 313, 309(e)-(h), 405, and 412, and 5 U.S.C. §§ 552 and 553, Part 68 of the Commission rules I AMENDED as set forth in the attached Appendix II, and that notice of proposed Rule Making IS PROVIDED to amend Section 68.213(a) of the Commission's rules, 47 C.F.R. § 68.213(a), as described herein and as set forth in Appendix III.

85. IT IS FURTHER ORDERED, That the Electronic Industries Association IS REQUESTED, to submit to the Commission by June 30, 1992 complete technical specifications for a material equivalent to gold for purposes of compliance with Subpart F of the Commission's rules, and, prior to that time, commencing six months from the date of publication of a summary of this *Report and Order and Further Notice of Proposed Rule Making* in the Federal Register, to submit semi-annual progress reports of its deliberations concerning such specifications.

86. IT IS FURTHER ORDERED, That plugs and jacks placed in service on or after January 1, 1991 SHALL CONFORM to Subpart F specifications of *Order*, 50 Fed. Reg. 27250 (1985). Plugs and jacks not conforming to Subpart F, either as set forth in the *Order*, or as Subpart F existed previously, placed in service prior to January 1, 1991 may remain connected, and be reconnected, indefinitely, and be newly connected up to December 31, 1990.

87. IT IS FURTHER ORDERED, That the Reply Comments of the American Telephone & Telegraph Company and the Further Comments of Carl Oppedahl ARE ACCEPTED and that the Motions to Strike and/or Oppositions with respect thereto ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX I

Comments

Anomet Products, Inc.
American Telephone and Telegraph Company
Ameritech Companies
Bell Atlantic Telephone Companies
BellSouth Corporation
Central Telephone Company
Cincinnati Bell
Contel Corporation
Telephone Company
Dupont Electronics
Florida Public Service Commission
General Instrument Corporation
GTE Service Corporation
Hackensack Water Company
Leviton Manufacturing Company
Metscan, Inc.
Mountain States Telephone and Telegraph Company
National Telephone Cooperative Association
New York State Department of Public Service
North American Telecommunications Association
NYNEX
Organization for the Protection and Advancement of Small Telephone Companies
Ohio Public Utilities Commission

Pacific Bell and Nevada Bell
Carl Oppedahl
Rural Electrification Administration
Southern New England Telephone Company
Southwestern Bell Telephone Company
Staff of the Public Utilities Commission of Ohio
Telecommunications Industry Association
United States Telephone Association
United Telephone System Companies
Virginia Plastics Company
Wisconsin Public Service Commission

Reply Comments

ADC Telecommunications, Inc.
American Telephone & Telegraph Company
Ameritech Companies
Bell Atlantic Telephone Companies
BellSouth Corporation
Central Telephone Company
General Instrument Corporation
GTE Service Corporation
Hackensack Water Company
Independent Data Communications Manufacturers Association
Metscan, Inc.
National Telephone Cooperative Association
NYNEX Telephone Companies
Carl Oppedahl
Siecor Corporation
Southwestern Bell Telephone Company
Staff of the Public Utilities Commission of Ohio
Telecommunications Industry Association
United States Telephone Association

APPENDIX II

Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68), is amended as follows:

AUTHORITY: Authority continues to be Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. § 155, unless otherwise noted.

1. Section 68.3 is amended to revise the definition of network interface or demarcation point as follows:

Demarcation Point: The point of demarcation and/or interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to Subpart F of Part 68 of the Commission's rules. "Premises" as used herein generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the telephone company's reasonable and nondiscriminatory standard operating practices. The "minimum point of entry" as used herein shall be either (1) the closest practicable point to where the wiring crosses a property line or (2) the closest practicable point to where the wiring enters a multiunit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which of (1) or (2) shall apply. The telephone company is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which of (1) or (2) above shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.

(a) *Single Unit Installations.* For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within twelve inches of the protector or, where there is no protector, within twelve inches of where the telephone wire enters the customer's premises.

(b) *Multiunit Installations.*

(1) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and nondiscriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises.

(2) In multiunit premises in which wiring is installed after August 13, 1990, including additions, modifications and rearrangements of wiring existing prior to that date, the telephone company may establish a reasonable and nondiscriminatory practice of placing the demarcation point at the minimum point of entry. If the telephone company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises.

2. Section 68.104, 47 C.F.R. § 68.104, is amended to revise subsection (a) to read as follows:

§ 68.104 Means of Connection.

(a) General. Any jack installed by the telephone company at, or constituting, the demarcation point shall conform to Subpart F. Subject to the requirements of Section 68.213, connection of wiring and terminal equipment to the telephone network may be made through a jack conforming to Subpart F or by direct attachment to carrier-installed wiring including, but not limited to, splicing, bridging, twisting and soldering. Telephone company-provided ringers may be connected to the network in accordance with the carrier's reasonable and nondiscriminatory standard operating practices. Connection to the network of wiring subject to Section 68.215 and terminal equipment used therewith shall be through telephone company-provided jacks conforming to Subpart F, in such a manner as to allow for easy and immediate disconnection.

* * * * *

3. Section 68.108, 47 C.F.R. § 68.108, is amended to read as follows:

§ 68.108 Incidence of Harm.

Should terminal equipment, inside wiring, plugs and jacks, or protective circuitry cause harm to the telephone network, or, should the carrier reasonably determine that such harm is imminent, the telephone company shall, where practicable, notify the customer that temporary discontinuance of service may be required; however, wherever prior notice is not practicable, the telephone company may temporarily discontinue service forthwith, if such action is reasonable under the circumstances. In case of such temporary discontinuance, the telephone company shall (a) promptly notify the customer of such temporary discontinuance, (b) afford the customer the opportunity to correct the situation which gave rise to the temporary discontinuance and (c) inform the customer of his right to bring a complaint to the Commission pursuant to the procedures set forth in Subpart E of this part.

4. Section 68.213, 47 C.F.R § 68.213, is amended to revise subsection (b) to read as follows, and to delete subsections (e), (f) and (g):

§ 68.213 Installation of other than " fully protected " non - system simple customer premises wiring.

(a) * * *

(b) Wiring Authorized. Unprotected premises wiring may be used to connect units of terminal equipment or protective circuitry to one another, and to carrier-installed facilities if installed in accordance with these rules. The telephone company is not responsible, except pursuant to agreement between it and the customer or undertakings by it, otherwise consistent with Commission requirements, for installation and maintenance of wiring on the subscriber's side of the demarcation point, including any wire or jacks that may have been installed by the carrier. The subscriber and/or premises owner may install wiring on the subscriber's side of the demarcation point, and may remove, reconfigure, and rearrange wiring on that side of the demarcation point including wiring that may have been installed by the carrier. The customer or premises owner may not access carrier wiring, and facilities on the carrier's side of the demarcation point. Customers may not access the telephone company-installed protector. All plugs and jacks used in connection with inside wiring shall conform to Subpart F of the Commission's rules.

(c) Material Requirements. * * *

(d) Attestation. * * *

(e) Delete.

(f) Delete.

(g) Delete.

APPENDIX III

It is proposed to amend Part 68 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations, Part 68 as follows:

1. The authority citation for Part 68 continues to be Sec 5, 48 Stat. 1068, as amended; 47 U.S.C. § 155, unless otherwise noted.

2. Section 68.213, 47 C.F.R. § 68.213, is amended to revise subsection (a) as follows:

§ 68.213 Installation of other than " fully protected " non - system simple customer premises wiring.

(a) Scope. Provisions of this rule are limited to "unprotected" premises wiring used with simple installations of wiring for one to four line residential and business telephone service. Unprotected premises wiring is wiring which is not located electrically behind apparatus which protects against hazardous voltages and imbalance. More complex installations of wiring for multiple line services, for use with systems such as PBX and key telephone systems, are controlled by § 68.215 of these rules.

FOOTNOTES

[1] Section 68.104(a) of the rules, provides:

Except for telephone company-provided ringers and except as provided in paragraph (c), all connections to the telephone network shall be made through the standard plugs and standard telephone company-provided jacks, or equivalent, described in Subpart F, in such a manner as to allow for easy and immediate disconnection of the terminal equipment. Standard jacks shall be so arranged that, if the plug connected thereto is withdrawn, no interference to the operation of equipment at the customer's premises which remains connected to the telephone network, shall occur by reason of such withdrawal.

Section 68.104(c) provides for tariff descriptions of plug and jacks. In *Order*, FCC 84-546, released November 20, 1984, the Commission rejected the claim that the "or equivalent" language of Section 68.104 would permit non-telephone company personnel to install a standard jack through which customer-provided inside wiring would be connected to the telephone network. The Commission referred to the report and order adopting that language that indicated that its purpose was to permit continued connection to the network of jacks already in place which did not conform to subpart F. *Connection of Terminal Equipment to the Telephone Network*, 62 FCC 2d 735, 739 (1976). *See also*, *Memorandum Opinion and Order*, 59 FCC 2d 83, 87 (1976).

[2] The Commission has defined inside wiring as the customer premises portion of telephone plant which connects station components to each other and to the telephone network. *Inside Wiring Reconsideration Order*, 1 FCC Rcd 1190, 1197 n. 1, *further recon.* 3 FCC Rcd. 1719 (1988), *remanded on other grounds National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422 (D.C. Cir. 1989)(*NARUC v. FCC*). Together with customer premises equipment (CPE), inside wiring constitutes all telephone plant located on the customer's side of the demarcation point marking the end of the telephone network. *Id.* Simple inside wiring is wiring used for one or two lines. Complex wiring, also referred to as intrasystem wiring, is used for more than two lines usually in association with PBX or key system equipment. *Id.* n. 3. Section 68.213 refers to simple inside wiring as "non-system premises wiring". In other decisions the Commission has referred to simple inside wiring as "customer-owned premises wiring" (COPW). *See, e.g.*, decisions cited in para. 3, herein. In Account 2321 of the new Uniform System of Accounts, 47 C.F.R. § 32.2321, inside wiring is referred to as "customer premises wiring". In this decision we will use the term "simple inside wiring" to refer to all one and two line telephone wiring (including the associated jacks) on the customer's side of the demarcation point, whether owned and installed by the customer or premises owner, or their agent, or previously installed and maintained by the carrier under tariff, *i.e.*, detariffed inside wiring. Section 68.215 governs connection of complex wiring to the telephone network.

[3] Section 68.3 of the rules, 47 C.F.R. § 68.3, defines network interface as:

> *Network interface or demarcation point*: The point of interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. The network interface or demarcation point shall be located on the subscriber's side of the telephone company's protector, or the equivalent thereof in cases where a protector is not employed, as provided under the local telephone company's reasonable and nondiscriminatory standard operating practices.

[4] The Commission had determined that "access to the protector poses a potential harm to the network that justifies, as a federal minimum, reserving access to the protector on the telephone company side of the demarcation point to the telephone company alone." *Section 68.213 Reconsideration Order*, para. 21.

[5] 47 C.F.R. § 68.213(c).

[6] 47 C.F.R. § 68.213(d).

[7] 47 C.F.R. § 68.213(f).

[8] 47 C.F.R. § 68.213(e).

[9] 47 C.F.R. § 68.213(g).

[10] The Commission is addressing separately what revisions, if any, are warranted in the Commission's previous determinations in CC Docket No. 79-105 concerning the regulatory treatment of installation and maintenance of inside wiring by carriers under the guidance provided by *NARUC v. FCC. Notice of Proposed Rule Making*, CC Docket 79-105, FCC 90-206, released May 31, 1990

[11] *See* para. 18, *infra*. The *Notice* in this proceeding addressed the petition for Rule Making, RM-5643, filed by the Electronic Industries Association, User Premises Equipment Division. TIA states that it is the successor to the User Premises Equipment Division of the Electronic Industries Association.

[12] For example, states BellSouth, while in the process of severing inside wiring the customer could receive a shock from ringing current. If the customer were standing on a ladder, serious injury or death could result, BellSouth asserts.

[13] "The Telephone Book: Getting What You Want And Paying Less For It", Carl Oppedahl (1987, Weber Systems).

[14] *Hush-A-Phone Corp.*, 20 FCC 391 (1955), *aff'd Hush-A-Phone Corp. v. United States*, 238 F.2d 266 (D.C. Cir. 1956); *Carterfone*, 13 FCC 2d 420, *recon. denied*, 14 FCC 2d 571 (1968). *See also North Carolina Utilities Commission v. FCC*, 552 F.2d 1036 (4th Cir., *cert. denied*, 34 U.S. 874 (1979), *cited with approval*, *Louisiana Public Service Commission v. FCC*, 106 S.Ct. 1890, 1902, n. 4 (1986). "|T|he Communications Act grants to the FCC, rather than the states, primary authority over terminal equipment used for both interstate and local communication . . . We have determined that the powers delegated to the Commission by the Act include the power to establish a registration program for all terminal equipment." 552 F.2d at 1052. As indicated, since 1984 the registration program, set forth as Part 68 of the Commission's rules, has included customer-provided inside wiring. In the instant decision, the Commission modifies the terms and conditions for customer provision of inside wiring.

[15] *See AT & T Premises Ruling*, 60 FCC 2d 939, 943 (1976).

[16] *See* cases cited at note. 14, *supra*. Section 68.3 of the Commission's rules, 47 C.F.R. § 68.3, defines harm as

> Electrical hazards to telephone company personnel, damage to telephone company equipment, malfunction of telephone company billing equipment, and degradation of service to persons other than the user of the subject terminal equipment, his calling or called party.

See also, *Second Computer Inquiry*, 77 FCC 2d 384 (1980), *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1982), *aff'd* 693 F.2d 198 (D.C. Cir. 1982); *Deregulation of Complex Wiring*, CC Docket No. 79-105, 48 Fed. Reg. 5034 (1983).

[17] Direct contact with ringing voltage could under some circumstances cause injury. However, the Commission has not been informed of any instance of such injury either in this proceeding or since the Commission initiated customer-provided wiring procedures in *First Report and Order*. In general, the probability of direct contact with ringing voltage and the likelihood of injury are small under most realistic conditions. We believe the benefits of the rule amendments we adopt here that permit consumers to directly access carrier installed-wiring fully justify the potential risks of harm. Nevertheless, the Commission encourages carriers to apprise customers of the potential exposure to ringing current when accessing carrier-installed wire at the demarcation point.

[18] Some commenters have requested that we specify procedures for installation of a plug/jack arrangement. As indicated, the Commission has previously determined that installation of jacks and inside wiring operations do not pose a significant risk of network harm or electrical hazard. *First Report and Order*. Installation of such jacks is currently permitted in customer-installed wiring and there are no Part 68 standards for accessing customer-installed wire and attaching a jack. Therefore, we do not believe that it is necessary for network protection to specify the manner in which customers may access carrier-installed wiring. Customers may splice, bridge, and attach wiring to carrier-installed wiring in essentially any convenient way. In the *Notice* the Commission contemplated that customers would be able to sever carrier-installed wiring and install a standard plug/jack. We believe that other means of completing the connection after access to the wiring is obtained will not cause network harm and will be privately beneficial. *See, e.g.*, comments of Metscan and Hackensack. Accordingly, subject to the discussion at para. 69, *infra*, we are not requiring that the customer install a jack after accessing wiring and are permitting access to carrier-installed wiring in essentially any convenient manner without standards for such access. Carriers are free to provide educational materials to their customers, and we believe that manufacturers will provide installation instructions in order to enhance the value and promote the sale of their products.

[19] While customers will be permitted to access carrier-installed wiring at the demarcation point, the Commission is not mandating that they access telephone wiring only, or first, at that point. In most situations, customers' needs will be satisfied if they can install a Subpart F jack to achieve the particular objective at hand, such as installing a telephone at an additional location, which could, but is not likely to, be near the protector. Further, where access very near the protector is desirable, as by alarm companies which have a service preference for their jack to be electrically antecedent to other jacks on the premises, such installation will be performed by professionals who are not likely accidentally to access and disable the protector. *See* discussion para. 46, *infra*, concerning access to the protector.

[20] The Commission in the *Notice* in this proceeding stated that it "was not proposing at this time any change in the requirements for complex wiring". *Notice*, n. 7. Therefore, the revisions to Section 68.104 will allow customers to access carrier wiring for the installation of simple wiring while complex wiring will continue to be required to be connected through a carrier-installed jack.

[21] *See* cases cited at note. 14, *supra*.

[22] Indeed, allowing direct access to wiring only at the existing demarcation point (depending on where the carrier has located it), where in many circumstances there will already be a carrier-installed jack to which the customer can easily attach, would serve very little purpose. Nor is location of the demarcation point far from the protector reasonably tailored to prevent access to the protector when other methods such as labeling and special protector compartments can limit access to the protector with lesser burden on the customer.

[23] As indicated, we are allowing the customer to access carrier-installed wiring on his premises up to the demarcation point, which in most situations will include essentially all carrier-installed wiring on his premises. Because of the elimination of the requirement that connection to the network be made through carrier-installed jacks, it would not be realistic or practical to promulgate regulations seeking to limit the extent and/or points of access to carrier-installed wiring on the customer's premises. And, the physical process of accessing wire and making connection to it reasonably and practically entails rearrangement, reconfiguration, and/or alteration of wiring. Removal of some wiring may be reasonably necessary to properly access wiring. Nor do we see any relationship to protecting against harm to the network by limiting the number of points of access, or the extent to which the customer may access carrier-installed wiring on his premises. Limiting access could additionally prevent privately beneficial modes of connection to the network. Accordingly, we find that it is a physical consequence of, and logically entailed in, allowing the customer to directly access carrier-installed wiring on his premises that the customer may reconfigure, rearrange, reuse and/or remove carrier-installed inside wiring on the customer side of the demarcation point. The revised Section 68.213(b) specifically authorizes these actions. Costs incurred by carriers in inside wiring activity have been, or are in the process of being, recovered pursuant to mechanisms approved by state and federal authorities. Our determination that customers may alter and/or remove carrier-installed inside wiring does not preclude carriers from continuing to recover costs incurred, or that they may incur in the future, for inside wiring. However, the extent to which carriers may impose charges for customer removal and use of such wiring has been considered by the Commission in *Inside Wiring Reconsideration Order* at paras. 30-35. The Commission does not address ownership of carrier-installed inside wiring, which can be determined in accordance with local law. *See Inside Wiring Reconsideration Order*, para. 50. However, carrier ownership of such wiring, should it continue, does not overrule customer rights under Part 68.

[24] The present definition of the demarcation point has applied regardless of whether the customer connects simple or complex wiring. There is nothing in the record warranting separate demarcation point definitions for connection by the customer of simple or complex wiring. Thus, the revised definition of the demarcation point will apply for connection of simple and complex wiring.

[25] The Commission has previously determined that the demarcation point as defined in Part 68 would serve as the legal boundary between the telephone company network and customer-installed wiring and for *all* regulatory purposes, *i.e.*, including those relating to accounting as well as to customer installation of inside wiring. *Section 68. 213 Reconsideration Order*, para. 3. In CC Docket 79-105 the Commission preemptively detariffed the installation and maintenance of inside wiring on the customer side of the demarcation point. The Commission will further consider the appropriate regulatory treatment of inside wiring on the customer side of the demarcation point under the guidance of the court in *NARUC v. FCC*. In this decision we do not address the accounting treatment by the carrier or the regulated/nonregulated status of the installation and maintenance by it of inside wiring on the customer's side of the demarcation point, including existing wiring and that installed in the future. The present effect of the revised demarcation point is twofold: (1) to establish the points, for both existing and new carrier installations, at which the customer may access the telephone network pursuant, and subject, to the standards and requirements of Part 68, and (2) to determine the point on the customer side of which any carrier activity is, and will be, subject to the Commission's previous and future determinations in CC Docket 79-105 and other proceedings, under the guidance of *NARUC v. FCC*, concerning the appropriate regulatory treatment by carriers of such activity. The Commission believes that the definition of the demarcation point adopted herein is sufficiently defined to clearly delineate where the customer may access the telephone network and for accounting purposes as well. Accordingly, the Commission is not persuaded by the concerns of Wisconsin that allowing customer access to wiring will render the demarcation point vague and nebulous.

[26] "Premises" may mean a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, subject to the local telephone company's reasonable and nondiscriminatory standard operating practices.

[27] The revised definition of the demarcation point for existing multiunit situations does not preclude relocation of the demarcation point at the request of the premises owner to the minimum point of entry. The accounting treatment, charges to the premises owner for purchase and/or continued use, and carrier practices as to removal, if any, of wiring and equipment between the former and new demarcation points will be subject to review by the Commission.

[28] We do not address the respective rights of tenants and property owners to access and rearrange deregulated inside wiring. Local law will determine their repective rights in this regard.

[29] The carrier has discretion to place the demarcation point only in accordance with the definition of the minimum point of entry. The carrier's reasonable and nondiscriminatory standard operating practices shall determine which of (1) or (2) shall apply. In general, carriers must terminate the network in a manner which accommodates the customer's rights to access the network in accordance with Part 68. Because the customer may access the network through direct access to carrier-installed wiring or through a Subpart F arrangement, the revised definition of the demarcation point provides that carrier-installed facilities at the demarcation point shall consist of wire or a Subpart F jack. The Commission does not preclude at this time carriers from terminating the network in combination protector, maintenance termination unit (MTU) and Subpart F jack arrangements. Carrier practices in these regards must be reasonable and nondiscriminatory and any costs associated with terminating the network must be just and reasonable. In subsequent proceedings the Commission may explore whether installation and maintenance of the type of combination unit used by carriers to terminate the network should be, in whole or in part, a deregulated activity.

[30] The revised definition of the demarcation point for multiunit applications permits, but does not require, that the demarcation point be at the minimum point of entry. The Commission may later explore whether the public interest requires that the demarcation point in multiunit installations, both new and existing, be at the minimum point of entry.

[31] Depending on service configurations, state requirements and carrier practices, the multiunit property owner may not be the customer of telephone service, *i.e.*, the unit occupant may be the customer. However, the customer's ability to perform wiring operations will depend on the contractual or other locally determined legal relationship with the multiunit property owner. In other words, in most cases it will be the multiunit property owner's ability to select the configuration of demarcation points that is the necessary precondition for increasing the customer's ability in a multiunit situation to perform inside wiring operations. Therefore, allowing the multiunit property owner to select the service configuration of the multiunit property will promote the customer's ability to perform inside wiring operations even if the multiunit property owner is not a customer.

[32] This rule section addresses only responsibility for installation and maintenance of inside wiring; it does not address tort or other liability arising from installation and maintenance of inside wiring undertaken in the past or in the future by carriers or customers.

[33] *See* Section 68.213(b) of the rules.

[34] *Lightning and 60 Hz Disturbance at the Bell Operating Company Network Interface*, TR-EOP-000001, Bell Communications Research, (1979); *Outdoor Telephone Network Interface - One and Two Line*, TR-TSY-000049, Bell Communications Research, (1979).

[35] Access to the protector is not allowed under the present rules. The record does not show that this has prevented adequate service by telecommunications-related service companies, such as alarm companies, that have a preference to access wiring and install a jack at a location electrically antecedent to other jacks on the premises. However, the revised rules adopted today will substantially enhance their ability to do so by assuring they will be able to install jacks anywhere on the customer's side of the demarcation point.

[36] The Commission's original rationale for not imposing longitudinal balance requirements, according to GTE, was that longitudinal imbalance leads to noise on the line which the customer will seek to correct whereas in data circuits the customer will not be listening and audible noise will not be heard and corrected.

[37] In the *Notice* the Commission did not solicit comment on or propose to modify the material requirements for wire, cords or passive adapters, as distinct from attestation for those requirements. Therefore, contentions that the material requirements should be strengthened are beyond the scope of this proceeding. Parties wishing to provide documentation demonstrating the need for such a provision may do so in a petition for Rule Making.

[38] Nothing in this or any other Commission proceeding addressing inside wiring preempts or limits the applicability of local codes or practices related to safety of customer installations.

[39] Section 68.3 defines harm as, among other things, damage to telephone company equipment.

[40] *See* 47 C.F.R. § 64.702(d)(2)(1987); *Second Computer Inquiry*, 84 FCC 2d 50, 82 (1980) (first reconsideration order; subsequent history omitted) ("all carriers subject to some Computer II disclosure requirements"); 47 C.F.R. § 68.110(a) & (b) (1987); *Computer and Business Equipment Manufacturers Association*, 93 FCC 2d 1226, 1238 (1983)(disclosure requirement applies to all information affecting interoperation of CPE with the network; Computer II "all carrier" rule is independent of Part 68 disclosure requirements).

[41] *See, e.g.*, "Money Saving Tips", C & P Telephone Directory White Pages for the District of Columbia, May 1989 - April 1990, p. 19.

[42] Section 68.215 requires, *inter alia*, that installation of wiring subject to that section generally be made by, or under the supervision of, persons with specified technical qualifications.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Computer III Remand Proceedings

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 1990; Released: July 23, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In the *Computer III* proceeding,[1] the Commission adopted major changes in the rules governing the participation of the Bell Operating Companies (BOCs) in the enhanced services market. For instance, the Commission replaced the requirement that the BOCs offer enhanced services through separate subsidiaries with nonstructural safeguards designed to prevent discrimination against competing enhanced service providers and cross-subsidization of enhanced services by basic service offerings. In *People of California v. FCC*, the Court of Appeals for the Ninth Circuit recently decided to vacate the Commission's *Computer III* decisions and remand for further proceedings.[2] The *California* opinion concluded that the Commission had not sufficiently justified its decision to replace structural separation with nonstructural safeguards for BOC enhanced service operations. The Court also held that certain Commission preemption decisions were not justified.

2. In addition to the BOC structural relief and preemption decisions, the Commission made a number of other policy decisions in *Computer III*. For example, AT&T was permitted to offer enhanced services on an integrated basis subject to the filing and approval of Comparably Efficient Interconnection (CEI) plans. The Commission also reaffirmed its *Computer II* decision to treat Network Channel Terminating Equipment (NCTE) as Customer Premises Equipment (CPE), but concluded that carriers should be permitted to provide remote loopback testing on a regulated basis. The Commission limited the "multiplexer exception" to existing equipment currently provided under that exception, and to any updated or improved versions of such equipment. No petitioner sought review of the *Computer III* decisions that related to AT&T enhanced services, NCTE, or the multiplexer exception, and the Court did not discuss these matters. Because the Court decided to vacate the *Computer III* decisions without any limitation, however, the *Computer III* orders apparently will be vacated in their entirety. [3] Thus, an interim waiver of the Commission's *Computer II* rules for AT&T and NCTE, effective on issuance of the Ninth Circuit's mandate, is necessary in order to maintain the status quo pending further Commission action.

II. DISCUSSION

3. Courts have upheld an agency's authority to adopt interim measures to prevent industry disruption after agency rules have been vacated if the agency takes steps to safeguard against the harms identified by the court. These measures may remain in effect while the agency conducts remand proceedings.[4] We hereby grant an interim waiver of *Computer II*, effective upon issuance of the mandate, for AT&T's provision of enhanced services on an integrated basis, and for carriers to continue offering loopback testing under the terms and conditions specified in *Computer III* on a regulated basis, and to continue applying the *Computer III* changes to the multiplexer exception and waiver standard.[5]

A. AT & T

4. In the *Computer III* proceeding, the Commission replaced the requirement that AT&T offer enhanced services through separate subsidiaries with nonstructural safeguards, but safeguards that differed from those applicable to the BOCs. Because of the different competitive situation in the provision of interstate interexchange basic services, AT&T was not required to unbundle its basic services useful in the provision of enhanced services, as were the BOCs, and was permitted to offer enhanced services integrated or collocated with basic service facilities pursuant to service-specific CEI plans.[6] Pursuant to *Computer III*, the Bureau has approved CEI plans permitting AT&T to offer the following services on an integrated basis: (1) Transaction Services; (2) Codec; (3) Subaccount Billing; (4) FTS 2000; (5) Enhanced Services Complex (voice); and (6) Protocol Processing. Three additional CEI-related items are pending before the Bureau: (1) Amendment to the Transaction Services CEI plan; (2) Enhanced Services Complex (data); and (3) Request for permanent waiver of the CEI requirements for 900 Dial-it service.

5. As previously noted, no one challenged the Commission's *Computer III* decisions concerning AT&T's provision of integrated enhanced services in any petition for review. The *California* opinion did not discuss those decisions. The entire focus of the Court's criticism of the *Computer III* decisions was the insufficiency of the Commission's explanation for its policy change between the *BOC Separation Order* and the initiation of *Computer III* regarding appropriate regulatory safeguards for BOC provision of enhanced services.[7] In these circumstances, we conclude that exercise of our authority to take interim measures to permit AT&T to continue offering enhanced services on an integrated basis is in the public interest, and is consistent with the court's opinion in *California*.

6. Immediate reversion to the regulatory situation prior to *Computer III* in this area would be seriously disruptive. Reimposing structural separation on AT&T's provision of enhanced services currently provided through collocated facilities would require that a separate subsidiary be established, which would have to maintain its own books of account, hire separate officers and operating personnel, and utilize computer equipment and facilities separate from those used in the provision of regulated services.[8] As a practical matter, it would be impossible for AT&T to begin providing these services on a separated basis the instant a mandate issues. Therefore, if AT&T were required to stop providing services on an integrated basis immediately after the mandate issues, customers would

lose service. We believe that a waiver of the *Computer II* rules for AT&T is necessary to prevent the disruption of service to customers.

7. In addition, we anticipate that the Commission will begin proceedings shortly proposing to reinstate structural relief for AT&T. It appears unnecessarily disruptive to compel AT&T to put its enhanced services operations in separate subsidiaries for a short period of time, when the Commission may decide to permit it to convert back to integrated operations.

8. For all these reasons, we grant AT&T a limited waiver, effective upon issuance of the mandate, to continue to offer the services for which CEI plans have been approved until the Commission issues a Notice of Proposed Rule Making proposing to readopt structural relief for AT&T's provision of enhanced services, at which time the Commission can consider whether to extend or modify this waiver. AT&T is free to add new customers to existing services, and to file new CEI plans. We will continue processing CEI plans and related petitions. We conclude that this procedure will preserve the status quo, avoid unnecessary disruption to AT&T and to customers, and generally serve the public interest.

B. NCTE

9. In *Computer III*, the Commission generally reaffirmed the decision it had made in *Computer II* to treat NCTE as CPE.[9] The Commission, however, permitted carriers to provide, as part of a tariffed offering, equipment on customer premises to support functions necessary to perform loopback tests from the demarcation point. The Commission also limited the "multiplexer exception"[10] to the provision of existing equipment provided under that exception, and to updated or improved versions of such equipment.[11] The Commission stated that it would entertain on a case-by-case basis requests for waivers to permit the offering of other NCTE functions on a regulated basis.[12] Upon issuance of the Ninth Circuit's mandate, some current carrier offerings may violate the *Computer II* rules.

10. No petitioner challenged the Commission's *Computer III* decisions regarding the regulatory treatment of NCTE. The *California* opinion did not discuss these decisions. Thus, we conclude that a waiver of the *Computer II* rules for carriers currently providing NCTE functionalities on a regulated basis under *Computer III* is consistent with the Court's opinion in *California*, and is necessary to prevent industry disruption. If the status of the NCTE functionalities currently provided as part of regulated offerings were to change from regulated to non-regulated, carriers would be required to amend their cost allocation manuals in order to reflect the new accounting treatment. In addition, carriers would have to refile tariffs to reflect the removal of the NCTE functionality. Making these changes to cost allocation manuals and tariffs would be time-consuming and expensive. Thus, it is clear that carriers could not comply immediately, and that classifying NCTE functionalities as non-regulated for accounting purposes would impose significant burdens on them.

11. In addition, we anticipate that the Commission will begin proceedings shortly proposing in part to reinstate the treatment of NCTE adopted in *Computer III*. We wish to avoid the industry disruption that would be caused by a requirement that carriers change the treatment of NCTE from regulated to non-regulated, and then change back to regulated.

12. We therefore grant carriers a waiver, effective on the issuance of the mandate, to continue offering loopback testing under the terms and conditions specified in *Computer III* on a regulated basis, and to continue applying the *Computer III* changes to the multiplexer exception and waiver standard. The waiver we grant in this order is effective upon issuance of the mandate and will be effective until the Commission issues its Notice of Proposed Rule Making on matters including NCTE.

III. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED, pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, that an interim waiver of *Computer II* is granted to the extent described herein, effective upon the issuance of the mandate in *People of California v. FCC*.[13]

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Amendment of Sections 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, Report and Order, 104 FCC 2d 958 (1986) (*Phase I Order*), *reconsideration*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration Order*), *further reconsideration*, 3 FCC Rcd 1135 (1988) (*Phase I Further Reconsideration*), *second further reconsideration*, 4 FCC Rcd 5927 (1989) (*Phase I Second Further Reconsideration*), *Phase I Order* and *Phase I Reconsideration Order vacated sub nom.* California v. FCC, No. 87-7230 (9th Cir. filed June 6, 1990), *appeal pending sub nom.* Illinois Bell Telephone Co. v. FCC, No. 88- 1364 (D.C. Cir. pet. for rev. filed May 16, 1988); *Phase II Order*, CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987), *reconsideration*, 3 FCC Rcd 1150 (1988) (*Phase II Reconsideration Order*), *further reconsideration*, 4 FCC Rcd 5927 (1989) (*Phase II Further Reconsideration*), *Phase II Order vacated sub nom.* California v. FCC, No. 87-7230 (9th Cir. filed June 6, 1990), *appeal pending sub nom. California v. FCC*, No. 88-7183 (9th Cir. filed May 13, 1988).

[2] *People of the State of California v. FCC*, No. 87-7230, slip. op. (9th Cir. June 6, 1990). The Commission decisions under review were the *Phase I Order*, *the Phase I Reconsideration*, *and the Phase II Order*.

[3] The D.C. Circuit has held that when an agency replaces an existing rule with a new rule, and a court vacates all or part of the new rule, the effect is to reinstate the rules previously in force. *Action on Smoking and Health v. C.A.B.*, 713 F.2d 795 at 797 (D.C. Cir. 1983).

[4] *See Mid-Tex Electric Cooperative Inc., v. Federal Energy Regulatory Commission*, 822 F.2d 1123 (D.C. Cir. 1987) (Court upholds agency adoption of interim measures; interim measures may remain in effect while agency conducts court-ordered remand proceedings); *American Gas Association v. F.E.R.C.*, 888 F.2d 136 (D.C. Cir. 1989) (Agency has authority to promulgate interim measures; Court holds specific measure invalid on

grounds that it did not sufficiently address Court's concerns on an interim basis and that two years had passed without agency issuing final order).

[5] We find that seeking comment on this interim waiver would be contrary to the public interest since: (1) the interim waiver is of limited duration; (2) there will shortly be ongoing public proceedings to promulgate a permanent rule; (3) the *Computer III* orders were originally adopted after a lengthy comment period; and (4) AT&T relied on non-structural safeguards for its provision of enhanced services and carriers relied on *Computer III* decisions to offer loopback testing on a regulated basis during the period between its promulgation and the Ninth Circuit's opinion vacating *Computer III*. *Cf. Mid-Tex*, 822 F.2d at 1131-1133.

[6] *Computer III Phase I Reconsideration* at ¶¶ 45-53. Before *Computer III*, AT&T was permitted to provide enhanced services using facilities not collocated with basic network facilities under the terms of the *AT&T Limited Waiver Order*, which treated such enhanced service facilities as CPE for regulatory purposes and used essentially the same nonstructural safeguards as applied to AT&T's integrated provision of basic services and CPE. Petition of AT&T for Limited and Temporary Waiver of 47 CFR Section 64.702 Regarding Its Provision of Unregulated Services Externally to the AT&T-C Network, *Memorandum Opinion and Order*, Mimeo No. 1147 (released November 27, 1985), appl. for *rev. denied*, 104 FCC 2d at 1043 n. 220. In *Computer III*, the Commission replaced those nonstructural safeguards with those adopted in *Computer III*. *See Computer III Phase I Reconsideration* at ¶ 53.

[7] *See California*, slip op. at 5750-5769.

[8] *See Computer II Final Decision*, 77 FCC 2d 384 at 475, para. 233.

[9] The BOCs were authorized to provide NCTE pursuant to nonstructural safeguards in the BOC *CPE Structural Relief Order*. Furnishing of Customer Premises Equipment by the Bell Operating Companies, CC Docket No. 86-79, 2 FCC Rcd 143 (1987).

[10] The multiplexer exception

> permits carrier provision of multiplexers on customer premises as part of a regulated service in order to facilitate provision of tariffed basic service offerings of (a) two or more communications channels to a single customer, or (b) individual channels to two or more customers.

Phase II Order at para. 235.

[11] *See Phase II Reconsideration* at para. 138.

[12] *Phase II Order*, 2 FCC Rcd at 3105-06.

[13] *People of the State of California v. FCC*, No. 87-7230, slip. op. (9th Cir. June 6, 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MICHAEL E. MARCOVSKY
and
LAR-TEX CELLULAR TELEPHONE
COMPANY, INC.

Petition for Order to Show Cause
Regarding Construction and
Operation of Frequency Block A
Cellular Facilities in the
Laredo, Texas Metropolitan
Statistical Area (MSA), Market
No. 281A

and

LAR-TEX CELLULAR TELEPHONE COMPANY, INC. File No. 01010-CL-MP-88

Application for Modified
Facilities for Station KNKA603,
Frequency Block A, in the
Domestic Public Cellular
Telecommunications Service for
the Laredo, Texas MSA

and

UNITED CELLULAR MASTER LIMITED PARTNERSHIP File No. 03916-CL-TC-1-89

Application for Consent to the
Transfer of Control of Lar-Tex
Cellular Telephone Company,
Inc., Licensee for Station
KNKA603 in the Laredo, Texas
MSA, from United Cellular Master
Limited Partnership to Centel
Cellular Company of Laredo

ORDER

Adopted: July 23, 1990; Released: July 23, 1990

By the Chief, Common Carrier Bureau:

1. On November 23, 1988, Murray and Randolph, Inc. filed the captioned Petition for Order to Show Cause against Lar-Tex Cellular Telephone Company, Inc. (Lar-Tex). Lar-Tex filed the captioned application for major modification of its authorization on April 11, 1988. The captioned application for consent to transfer control of Lar-Tex, from United Cellular Master Limited Partnership to Centel Cellular Company of Laredo, was filed with the Commission on September 11, 1989.

2. The Commission, Lar-Tex Cellular Telephone Company, Inc., United Cellular Master Limited Partnership and Michael E. Marcovsky ("the parties") have reached an agreement that resolves the matters raised by the captioned applications and Petition for Order to Show Cause. The terms and conditions of this agreement are contained in the attached Consent Decree.

3. We have reviewed the terms of the Consent Decree and evaluated the circumstances of this case. We believe that the public interest would be served by approving the Consent Decree, the terms of which are incorporated herein by reference.

4. Accordingly, IT IS ORDERED that the Consent Decree, incorporated by reference herein, is adopted.

5. IT IS FURTHER ORDERED that the captioned Petition for Order to Show Cause IS DISMISSED on the grounds that the Petition has been satisfied, in substance, by adoption of the Consent Decree.

6. IT IS FURTHER ORDERED that the application of Lar-Tex Cellular Telephone Company for a major modification of its authorization, File No. 01010-CL-MP-88, IS GRANTED.

7. IT IS FURTHER ORDERED that the application of United Cellular Master Limited Partnership to transfer control of Lar-Tex Cellular Telephone Company, Inc. to Centel Cellular Company of Laredo, File No. 03916-CL-TC-1-89, IS GRANTED, conditioned on the parties' compliance with Section 8(a) of the Consent Decree.

8. IT IS FURTHER ORDERED that this Order is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

CONSENT DECREE

1. Lar-Tex Cellular Telephone Company, Inc. (Lar-Tex) holds the Block A (non-wireline) cellular authorization for the Laredo, Texas Metropolitan Statistical Area (MSA). Lar-Tex is controlled by United Cellular Master Limited Partnership (United), of which, in turn, Michael E. Marcovsky (Marcovsky) is the general partner. On September 11, 1989, United filed the captioned application for consent to transfer control of Lar-Tex to Centel Cellular Company of Laredo.

2. Lar-Tex's application for the Laredo license proposed a single cellular facility to be located on Loop 20 (Loop 20 facility). The Commission granted Lar-Tex's application, and authorized construction of the Loop 20 facility, on June 26, 1987. On April 11, 1988, Lar-Tex filed the captioned application for major modification of its authorization. This application proposes shifting the location of the cellular facility from Loop 20 to the KVTV tower (KVTV facility) and adding a second antenna near the

Goodrich Uniroyal building (Uniroyal facility). On November 9, 1988, Lar-Tex filed an FCC Form 489 reporting that construction of the Loop 20 facility had been completed in conformance with Lar-Tex's authorization.

3. On November 23, 1988, Murray and Randolph, Inc. filed the captioned Petition for Order to Show Cause asking that the Commission investigate and impose sanctions against Lar-Tex. The Petition stated that Lar-Tex constructed the KVTV and Uniroyal facilities without Commission authorization and that Lar-Tex never built the authorized Loop 20 facility. Based on these allegations and responsive pleadings by Lar-Tex, the Commission conducted a preliminary investigation. From this investigation, and prior to review or further comment by Lar-Tex, and making no findings concerning intentional violations by Michael E. Marcovsky, the Commission believes that a *prima facie* case existed that the following violations of Commission regulations apparently occurred:

(a) *Construction of the Uniroyal facility:* The Uniroyal facility was apparently constructed at a location outside of Lar-Tex's Cellular Geographic Service Area (CGSA), without prior Commission authorization, as required by Section 22.43(a)(1) of the Commission's Rules (the Rules).

(b) *Operation of the Uniroyal facility* : The Uniroyal facility was apparently operated without Commission authorization, as required by Section 301 of the Communications Act of 1934, as amended, (the Act) and Section 22.3 of the Rules.

(c) *Operation of the KVTV facility:* The KVTV facility was apparently operated so that the 39 dBu contour exceeded the boundaries of its CGSA, which was not authorized by the Commission.

(d) *Inaccurate Form 489:* A Form 489 was filed indicating that the Loop 20 authorized facility had been built, when Lar-Tex had apparently built the unauthorized Uniroyal and KVTV facilities.

4. For the purposes of this Consent Decree, the following definitions apply:

(a) "Parties" means Lar-Tex Cellular Telephone Company, Inc., United Cellular Master Limited Partnership and Michael E. Marcovsky;

(b) "Order" means an order of the Commission adopting the terms and conditions of this Consent Decree and formally granting the above-captioned applications and denying the Petition for Order to Show Cause, subject to the parties' compliance with the terms in paragraphs 8(a) and 8(b) of this Decree.

(c) The term "control" used in paragraphs 8(c) and 8(d) of this Decree means indirect or direct, *de facto* or *de jure* control as defined by existing Commission precedent at the time this Decree is signed.

5. The parties admit the jurisdiction of this Commission over them and over the subject matter of this action for the purposes of this Consent Decree and any Order described in paragraph 4(b).

6. The parties agree that upon signing by the Commission and the parties, the provisions of this Consent Decree shall be incorporated by reference in any Order described in paragraph 4(b) formally adopting this Consent Decree and terminating the captioned proceedings.

7. The parties waive any rights they may have to appeal any Order described in paragraph 4(b).

8. In consideration for the Commission's entering into this Consent Decree, and in order to avoid any disruption of service and to minimize the continuation of degraded service by the Block A licensee in the Laredo market, and in order to avoid litigation costs, the parties agree to the following terms.

(a) Lar-Tex Cellular Telephone Company, Inc. will make a voluntary contribution to the United States Treasury, without further protest or recourse, in the amount of $325,000.00 within sixty days of the date on which the Order is released.

(b) United Cellular Master Limited Partnership agrees to consummate the above-referenced transfer of control (File No. 03916-CL-TC-1-89) within 20 days of the date on which the order is released, and so notify the Commission.

(c) United Cellular Master Limited Partnership, any of its subsidiaries or successors and any entity which United Cellular Master Limited Partnership controls, agree never again to hold a common carrier license or authorization issued by the Federal Communications Commission, or apply for such a license or authorization.

(d) Michael E. Marcovsky, and any entity which he controls, agree never again to hold a common carrier license or authorization issued by the Federal Communications Commission, or apply for such a license or authorization.

9. In light of the covenants and representations contained in this Decree, and in express reliance thereon, the Commission agrees that it will take no further action against the parties for the alleged violations listed in paragraph 3 of this Decree and will issue the Order described in paragraph 4(b). The Signatories further agree that this Consent Decree does not constitute a finding or admission that any such violations took place.

10. The parties understand that the Commission authorization permitting the transfer of control of Lar-Tex to Centel Cellular Company of Laredo will be conditioned on compliance with paragraph 8(a) of this Decree. If paragraph 8(a) is not complied with, the Commission may declare, in its sole discretion, the Consent Decree to be null and void, the Commission may, in it sole discretion, set aside the transfer authorization, and the Commission may pursue whatever rememdies are contained elsewhere in this Decree.

11. The parties agree that any violation of an Order incorporating the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

12. If the Consent Decree is not signed by the Commission and each of the parties, or is otherwise rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any fashion in a legal proceeding.

13. If the Commission brings an action in United States District Court to enforce the terms of the Order, the parties agree that they will not contest the validity of the Order, will waive any statutory right to a trial *de novo* and will consent to a judgment incorporating the terms of this Consent Decree.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

BELL OPERATING COMPANIES'

Joint Petition for Waiver of
Computer II Rules

MEMORANDUM OPINION AND ORDER

Adopted: July 20, 1990; Released: July 23, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. On July 3, 1990, the Bell Operating Companies (BOCs) filed a petition for waiver of the Commission's *Computer II* rules.[1] The BOCs' petition was precipitated by the opinion of the U.S. Court of Appeals for the Ninth Circuit vacating and remanding three of the Commission's *Computer III* decisions.[2] Under the *Computer II* regime, the BOCs generally were required to offer enhanced services through separate subsidiaries. In its *Computer III* decisions, the Commission permitted the BOCs to integrate their enhanced services with their basic service offerings, provided that the BOCs complied with certain "non-structural safeguards" designed to prevent anti-competitive and discriminatory behavior on the part of the BOCs. Because Open Network Architecture (ONA) has not yet been implemented, the BOCs have been providing specific enhanced services on an integrated basis pursuant to Comparably Efficient Interconnection (CEI) plans and CEI waivers for limited market trials.

2. Although the Court in *California* found in part that the record supported the Commission's decision that its CEI policy would be effective in preventing discrimination, the Court decided to vacate the *Computer III* decisions that authorize the BOCs to provide enhanced services on an integrated basis. [3] The vacation of the *Computer III* orders generally returns the industry and the Commission to a *Computer II* regime.[4] Under *Computer II*, the BOCs must offer enhanced services on a separated basis, unless they obtain a waiver from the Commission.[5] Before the adoption of the *Computer III* decision, the Commission granted waivers to permit the BOCs and AT&T to provide specific enhanced services on an integrated basis. These waivers authorized unseparated provision of protocol conversion services,[6] spread spectrum services to support the provision of alarm services,[7] and Customer Dialed Account Recording (CDAR), a Centrex feature.[8]

II. THE PETITION

3. The BOCs collectively request an interim waiver of the *Computer II* rules to provide existing and new customers with enhanced services offered pursuant to approved CEI plans, and continue unseparated planning and development of enhanced services.[9] The BOCs request an interim waiver for as long as necessary for the Commission to conduct proceedings to determine whether to extend this relief during the pendency of the remand proceeding.[10] The BOCs state that, absent a waiver, upon issuance of the mandate they could be in violation of the *Computer II* rules.[11] The BOCs contend that it will be impossible for them to comply with the *Computer II* structural separation requirements immediately. The BOCs state that in the time before the mandate issues, they will be unable to form, capitalize, and staff separate subsidiaries, change ordering and maintenance procedures, and transfer and reconnect collocated enhanced service equipment.[12]

4. The BOCs argue that there is good cause to waive the *Computer II* rules because over 160,000 customers depend upon enhanced services for their business and personal use.[13] The BOCs state that a return to structural separation would require relocating enhanced service equipment, hiring new personnel, locating and renovating facilities, and moving and installing network services. Such an undertaking, according to the BOCs, would severely disrupt customer service.[14] The BOCs assert that the CEI requirements and the Cost Allocation Manuals will prevent discrimination against unaffiliated enhanced service providers and cross-subsidization of BOC enhanced services by regulated service ratepayers.[15]

III. DISCUSSION

5. Courts have upheld an agency's authority to adopt interim measures to prevent industry disruption after agency rules have been vacated. These interim measures may remain in effect while the agency conducts remand proceedings.[16] We believe that a limited interim waiver of the Commission's *Computer II* rules to permit the BOCs to continue offering enhanced services on an integrated basis pursuant to approved CEI plans is in the public interest.

6. The BOCs have been offering specific enhanced services on an integrated basis pursuant to approved CEI plans for more than three years. We find that it would not be feasible for the BOCs to offer enhanced services on a fully separated basis immediately. The *Computer II* rules, as applied to the divested BOCs in the *BOC Separation Order*, permitted the BOCs to share some administrative functions, but required that separate subsidiaries maintain their own books of account, hire separate officers and operating personnel, and utilize computer equipment and facilities separate from those used in the provision of regulated services.[17] Absent a waiver, the BOCs will be forced, at a minimum, to suspend their enhanced service operations immediately upon issuance of the mandate until they complete the changeover to structural separation. Such a result would cause severe customer dislocation.

7. In addition, the Commission may develop a record and decide on remand to permit the BOCs to offer enhanced services on an integrated basis.[18] The Chairman has announced that the Commission will conduct further proceedings to reexamine BOC structural separation requirements.[19] It appears unnecessarily disruptive to compel the BOCs to put their enhanced services operations in separate subsidiaries for a short period of time, when the Commission may decide to permit them to convert back to integrated operations. More than 160,000 customers

now subscribe to and depend upon BOC enhanced service offerings. In addition, as the petition states, customers who are not yet receiving service may have made business plans based on a legitimate expectation that they would be able to receive services for which CEI plans have been approved. Forbidding the BOCs to roll out service offerings for which we have approved CEI plans would also unnecessarily disrupt BOC enhanced service operations. Service discontinuance, disruption, or changes in the terms or conditions of the offering could impose significant costs on customers, especially those customers who use enhanced services in their business operations. An interim waiver would prevent the imposition of undue hardship on these customers.

8. While temporarily suspending BOC enhanced service operations could have a very significant adverse effect on customers, the potential harm to competitors and ratepayers of permitting the BOCs to continue certain integrated operations for a limited time is quite small, and can be further limited by the provisions we adopt here. In adopting these measures, we believe we can safeguard against the concerns identified by the Court on an interim basis.[20] The interim waiver is limited to specific services: there are only 21 CEI plans and 4 market trials currently in operation. While the Court was not convinced by the Commission's generalized assertion that cost allocation safeguards would effectively prevent cross-subsidization, the Commission subsequently developed and implemented a set of specific safeguards to guard against any cross-subsidization of non-regulated and regulated activities.[21] First, the Commission has required that the BOCs file cost allocation manuals that apportion costs between regulated and nonregulated activities on a cost causative basis. All of the BOCs' manuals have now been approved. Second, the BOCs must obtain independent yearly attest audits by independent Certified Public Accountants of their cost allocations, and the independent audit report must include a positive assurance that the carriers' allocations comply with the approved cost manuals. Third, our automated reporting management information system (ARMIS) provides data on the costs assigned to non-regulated operations, and permits Commission auditors to compare yearly results as well as one carrier's cost assignments with the assignments of other carriers. Fourth, Commission staff reviews the independent audit reports, and in specific instances conducts its own review of carrier cost allocations between regulated and nonregulated activities. Furthermore, with respect to each CEI plan now in question, the BOCs have filed service-specific changes to their cost allocation manuals, and these changes have been accepted by the Bureau.[22]

9. In addition, we limit the waiver in the following ways: First, although courts have upheld agency promulgation of interim measures without notice and comment for the entire length of a remand proceeding, we have decided to invite comments before any final determination of the duration of the waiver. We anticipate that the Commission will determine whether to extend or terminate the waiver when the Commission initiates further proceedings to determine whether and under what conditions it should permit the BOCs to provide enhanced services on an integrated basis. We expect the Commission to initiate these proceedings in the near future.[23] Second, the BOCs may not file any new CEI plans and must withdraw all CEI plans currently pending before the Bureau but not yet approved. Third, the BOCs may not continue the integrated planning and development of BOC enhanced services (other than those that are the subject of approved CEI plans).

10. Thus, in order to avoid unnecessary disruption and customer dislocation, and to allow the Commission sufficient time to assess the effects of the Ninth Circuit's opinion and formulate decisions on future actions, we hereby grant an interim waiver of *Computer II*, effective when the mandate issues, to permit the BOCs to offer enhanced services to existing and new customers under previously approved CEI plans.[24] This waiver will remain effective until the Commission initiates further proceedings to reexamine BOC structural separation requirements. We also invite comment on whether, and under what conditions, the Commission should permit the BOCs to offer enhanced services on an integrated basis during the pendency of those proceedings.[25]

11. This proceeding will be treated as a non-restricted proceeding for purposes of the *ex parte* rules. *See* 47 C.F.R. §§ 1.1200 (a), 1.1206.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that pursuant to Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91 and 0.291, the BOC Joint Contingency Petition for Interim Waiver of the Computer II Rules, IS GRANTED to the extent described herein and otherwise DENIED. Also, COMMENT IS SOUGHT on whether to permit the BOCs to offer services pursuant to CEI plans during the pendency of the remand proceeding.

13. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, comments SHALL BE FILED with the Secretary, Federal Communications Commission, Washington, D.C. 20554 on or before August 10, 1990, and reply comments SHALL BE FILED with the Secretary on or before August 24, 1990. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. In addition, parties should file two copies of any such pleadings with the Policy and Program Planning Division, Common Carrier Bureau, Room 544, 1919 M Street, N.W., Washington, D.C. Parties should also file one copy of any documents filed in this docket with this Commission's copy contractor, International Transcription Services, Inc., Suite 140, 2100 M Street, N.W., Washington, D.C. Comments and reply comments may be obtained during regular business hours in the Policy and Programming Division, Room 544, 1919 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] BOC Joint Contingency Petition for Interim Waiver of the *Computer II* Rules, filed July 3, 1990 (hereinafter Petition). *Amendment of Section 64. 702 of the Commission's Rules and Regulations (Computer II)*, Final Decision, 77 FCC 2d 384 (1980), *modified on recon.* 84 FCC 2d 50 (1981), *modified on further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer and Communications Industry Association v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[2] *People of the State of California v. FCC*,No. 87-7230, slip op. (9th Cir. June 6, 1990). The orders under review were: *Amendment of Sections 64. 702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, Report and Order, CC Docket No. 85-229, 104 FCC 2d 958 (1986) (*Phase I Order*), *recon.*, 2 FCC Rcd 3035 (1987) (*Phase I Reconsideration);* 2 FCC Rcd 3072 (1987) (*Phase II Order*).

[3] *People of California v. FCC*, slip. op. at 5757. The Court concluded that the Commission did not provide a sufficient explanation for its conclusion that cost allocation safeguards could effectively prevent cross-subsidization of competitive enhanced service offerings by regulated ratepayers. *Id.* Therefore, the Court decided to vacate the *Computer III* orders listed above, and remanded to the Commission for further proceedings consistent with the Court's opinion. *Id.* at 5784.

[4] The Court of Appeals for the District of Columbia Circuit has held that when an agency replaces an existing rule with a new rule, and a Court vacates all or part of the new rule, the effect is to reinstate the rules previously in force. *Action on Smoking and Health v. C. A. B.*, 713 F.2d 795, 797 (D.C. Cir. 1983).

[5] Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies (*BOC Separation Order*), 95 F.C.C. 2d 1117 (1983), *reconsideration*, 49 Fed. Reg. 26056 (June 26, 1984).

[6] *See, e.g., Pacific Bell Telephone Company, Southern Bell Telephone Company and South Central Bell Telephone Company, Southwestern Bell Telephone Compny, New York Telephone Company and New England Telephone Company, New Jersey Bell Telephone Company, Northwestern Bell Telephone Company, Pacific Northwest Bell Telephone Company, Ameritech Oprating Companies, Petitions for Waiver of Section 64.702 of the Commission's Rules and Regulations to Provide Certain Types of Protocol Conversion Within Their Basic Telephone Networks, FCC 84-561*, File Nos. ENF 84-15, ENF 84-19, ENF 84-20, ENF 84-21, ENF 84-22, ENF 84-23, ENF 84-24, ENF 84-48 (released November 28, 1984) (X.25 to X.75 conversion); *Petitions for Waiver of Section 64.702 of the Commission's Rules (Computer II) filed by Pacific Bell, Southern Bell Telephone and Telegraph Company and South Central Bell Telephone Company, Southwestern Bell Telephone Company, New York Telephone Company and New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, Northwestern Bell Telephone Company, Pacific Northwest Bell Telephone Company, Ameritech Operating Companies*, FCC 85-101, File Nos. ENF 84-15, ENF 84-19, ENF 84-20, ENF 84-21, ENF 84-22, ENF 84-23, ENF 84-24, ENF 84-48 (released March 26, 1985) (asynchronous to X.25 conversion).

[7] *See, e.g.*, Applied Spectrum Technologies, Inc., Petition for Declaratory Ruling Under Section 64.702 of the Commission's Rules Regarding the Status of "Spread Spectrum" Transmission Services, Memorandum Opinion and Order, ENF 85-6 (released July 3, 1985).

[8] *Petitions of the Bell Atlantic Telephone Companies et al.*, Memorandum Opinion and Order, Mimeo No. 1606 (released Dec. 23, 1985).

[9] The BOCs are offering services on an integrated basis pursuant to CEI plans, and to CEI waivers for limited market trials. Because the differences between the types of authorizations are not relevant to our analysis in this order, we refer to both types of BOC filings as CEI plans. The BOCs are also offering enhanced services pursuant to continuing waivers of *Computer II*. Permission to provide those services on an integrated basis was independent of *Computer III*, and therefore was unaffected by the Court's recent decision.

[10] Petition at 7-8.

[11] Petition at 4. Under *Computer III*, pending the final implementation of Open Network Architecture, the BOCs must file and gain approval of CEI plans, or obtain a waiver of the CEI requirements, in order to offer enhanced services on an integrated basis. The BOCs collectively have received approval for 21 CEI plans and have conducted 9 market trials pursuant to CEI waivers, 5 of which have now ended.

[12] Petition at 4.

[13] Petition at 3.

[14] Petition at Exhibit B.

[15] Petition at 6. The BOCs also state that if any state imposes different compliance requirements on intrastate services, the Commission will be notified. Petition at 8, n. 15. One party, California, filed comments in response to the BOC petition. Comments of the People of the State of California and the Public Utilities Commission of the State of California on the Bell Operating Companies' Joint Contingency Petition, filed July 12, 1990.

[16] *See Mid-Tex Electric Cooperative Inc., v. Federal Energy Regulatory Commission*, 822 F.2d 1123 (D.C. Cir. 1987) (Court upholds agency adoption of interim measures; measures may remain in effect while agency conducts court-ordered remand proceedings); *American Gas Association v. F.E.R.C.*, 888 F.2d 136 (D.C. Cir. 1989) (Agency has authority to promulgate interim measures; Court holds specific measure invalid on grounds that it did not sufficiently address Court's concerns on an interim basis and that two years had passed without agency issuing final order).

[17] *See Computer II* Final Decision, 77 FCC 2d 384 at 475, para. 233; Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Services by the Bell Operating Companies (BOC *Separation Order)*, 95 FCC 2d 1117, 1120 (1983), *reconsideration*, 49 Fed. Reg. 26056 (June 26, 1984). We also note that the Commission, in originally imposing structural separation on the BOCs, gave them more than seven months to comply with that requirement. *BOC Separation Order*, 95 F.C.C. 2d at 1150.

[18] *People of the State of California v. FCC*, No. 87-7230, slip. op. at 5768 (9th Cir. June 6, 1990).

[19] Statement of FCC Chairman Alfred C. Sikes on *California vs. FCC*, July 9, 1990.

[20] *See Mid-Tex* at 1130 (agency authority to adopt interim measures conditioned on adoption of provisions designed to safeguard against concerns identified by court on an interim basis).

[21] *See* Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, CC Docket No. 86-111, 2 FCC Rcd 1298, *reconsideration*, 2 FCC Rcd 6283 (1987), *further reconsideration*, 3 FCC Rcd 6701 (1988), *aff'd sub nom. Southwestern Bell Corporation v. FCC*, No. 87-1764, slip op. (D.C. Cir. March 2, 1990).

[22] Reliance on accounting safeguards is consistent with the Commission's approach under *Computer II*, when the Commission granted waivers permitting predivestiture AT&T to provide certain specific services on an integrated basis pursuant to accounting safeguards.

[23] Statement of FCC Chairman Alfred C. Sikes on *California vs. FCC*, July 9, 1990.

[24] Pursuant to Section 1.45(e) of the Commission's Rules, we grant in part this request for temporary relief before the filing of replies. 47 C.F.R. § 1.45(e). We find that waiting for the filing of replies before granting this interim waiver is unnecessary since: (1) the interim waiver is of limited duration; (2) there will be an opportunity for public comment prior to a Commission decision whether to extend or terminate this waiver during the pendency of a new Rule Making; (3) there will be ongoing public proceedings to promulgate a permanent rule; (4) the *Computer III* orders were originally adopted after a lengthy comment period; and (5) the BOCs relied on non-structural safeguards adopted in *Computer III for* their provision of enhanced services during the period between its promulgation and the time it was held invalid by the Ninth Circuit. *Cf. Mid-Tex*, 822 F.2d at 1131-1133.

[25] In granting interim relief, we do not attempt or intend to prevent any state from regulating the provision of any wholly intrastate enhanced services by telephone companies. We do require, however, that the BOCs notify the Commission of any specific state regulatory proposals or actions in this area so that the Commission may determine what, if any, federal action may be appropriate. This waiver, of course, does not alter BOC obligations to comply with the restrictions found in the *Modification of Final Judgment.*

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 86-182

In the Matter of

Automated Reporting Requirements
for Certain Class A and Tier 1
Telephone Companies (Parts 31,
43, 67, and 69 of the FCC's Rules)

ORDER

Adopted: July 13, 1990; Released: July 20, 1990

By the Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. By this Order, we adopt revisions to FCC Report No. 43.01, the ARMIS Quarterly Report. The revisions include: (1) changing the basis of Table I from its current quarterly format to a year-to-date format; (2) making a number of additional minor technical changes to Table I; and (3) adding Table III to capture the impact of out-of-period adjustments. The revised report is to be used by the carriers beginning with the first quarter of 1990 filings.

2. In the *ARMIS Order*,[1] the Commission established an automated system for collecting the financial and operating data necessary for it to effectively administer its accounting, separations and access rules. Among the reports the Commission established in that order was the ARMIS Quarterly Report. This report provides aggregated revenue, cost and traffic data quarterly, thereby enabling the Commission to monitor the major aspects of the carriers' operations and to detect problems and take timely and effective actions when necessary. The Commission directed the Common Carrier Bureau to develop the specific format and specifications for the reports.

3. The Bureau established the format and specifications for the Quarterly Report, on May 31, 1988.[2] It revised the form on January 6, 1989 and on April 18, 1990 it issued an *Order Inviting Comment* in which it proposed additional changes to the report. In this order we address the issues raised by the parties that responded to the *Order Inviting Comment*.

II. DISCUSSION

4. Comments were filed by the following parties: The Bell Atlantic Telephone Companies (Bell Atlantic), Cincinnati Bell Telephone (Cincinnati), Contel Corporation (Contel), GTE Service Corporation (GTE), MCI Communications Corporation (MCI), Southern New England Telephone-Company (SNET), Southwestern Bell Telephone Company (SWB), United Telecommunications, Inc. (United) and The United States Telephone Association (USTA). Replies were filed by the Ameritech Operating Companies (Ameritech), Bell Atlantic, BellSouth Corporation (BellSouth), Contel, GTE, SWB and USTA.

A. Change in Basis of Table I and Introduction of Table III

5. The proposals to change the basis of Table I from quarterly to year-to-date and to introduce Table III are intended to enable the Commission to more effectively monitor the carriers' financial and cost allocation data and to reconcile that data with other reports filed by the carriers. Currently the reconciliation is very difficult because the carriers use different adjustment procedures for the various costing systems. For example, the carriers only rarely adjust prior period accounting data after they close their books; [3] however, they routinely make prior period adjustments to their jurisdictional separations and access data up to 24 months after the fact. Although the carriers routinely make these adjustments to their costing systems, they do not reflect these adjustments in their ARMIS Quarterly Reports. The proposed change in the basis of Table I and the introduction of Table III are intended to rectify this problem by capturing all the adjustments made to previous reporting periods.

6. Only SNET opposes the change in the basis of Table I from current quarter to year-to-date data. It argues that the existing Quarterly Report provides adequate information for the Commission's purposes and that no revision in the basis is necessary. We disagree. Unless we change the basis of Table I we will not be able to reconcile the Quarterly Reports with the annual reports. Consider the following example: During the third quarter a carrier discovers a separations problem that relates to its first quarter operations. The carrier would not report this amount in its third quarter Quarterly Report because the adjustment relates to the first quarter, but it would affect its annual results. Furthermore, there is no requirement to refile the Quarterly Report for the first quarter. As a result, the sum of the four Quarterly Reports will not equal the annual report.

7. USTA and the LECs object to the establishment of Table III. They argue that the Commission does not need the data and that it is too burdensome for the carriers. MCI, on the other hand, believes the adjustment data proposed in Table III is necessary, but that the specific proposal falls short of what is necessary to completely analyze the carriers' filings. MCI believes that adjustments to each entry on Table I should be reported separately on Table III.

8. We disagree with the LECs' contention that the adjustment data proposed in Table III is not necessary. In the two years that the ARMIS Quarterly Reports have been filed, we have noted serious shortcomings in the report. Most notably, since the data cannot be reconciled to other reports filed with the Commission (*e.g.*, Report 492 Rate of Return and the annual ARMIS reports), the reliability of the Quarterly Report cannot be established. As a result, it has not been relied upon as much as intended in the Commission's overall regulatory program. We also disagree with MCI that Table III should be expanded. We have analyzed the adjustments which the carriers have made over the past two years, and we have determined that their size does not warrant the level of detail shown in Table I.[4] As a result, we are establishing Table III at the detail proposed in our *Notice Inviting*

Comment. However, we will monitor these adjustments closely and if we find the table needs to be expanded, we will make appropriate additional changes.

B. Other Table III Issues

9. Bell Atlantic questions the necessity of monitoring the impact of out of period adjustments, given that any adjustments made more than nine months after the close of an enforcement period have no impact on rate of return enforcement. It argues that FCC Form 492 already provides data on the impact of out of period adjustments to monitor rate of return. Rate of return reporting, however, is not our sole concern here. We are also concerned about the integrity of the cost and revenue data filed in ARMIS which are the basis of our analysis and decision-making involving accounting, separations and access rules. Moreover, FCC Form 492 requires only a single number to summarize the impact of all out of period adjustments to revenues, expenses, taxes and investment. The data required in Table III track the impact of all out of period adjustments on previously filed ARMIS reports.

10. The LECs also object to the collection of nonregulated data in Table III, arguing that it is their general practice to accord these data the same treatment as Part 32 data. They argue that nonregulated data are reported as "booked", end of period data. We are persuaded that most carriers report their nonregulated data on the same basis as their Part 32 data. However, Part 64, which prescribes the treatment of nonregulated data, is silent regarding out of period adjustments, and we are not convinced that all companies report Part 64 data on a "booked", end of period basis. Accordingly, although we will not require adjustment reporting for nonregulated data in Table III, we will require that all carriers making retroactive adjustments to nonregulated data disclose the particulars of these adjustments, at the Table III level of detail, in the footnotes to Table I.

11. Finally, the LECs ask to defer until 1991 the requirement to file data for the previous enforcement period in columns (d), (g), (j), (m) and (p). They assert that, until then, reporting for the previous enforcement period (1987/1988) requires translating the data from that period's Part 31 accounting to our current Part 32 accounting.[5] The carriers maintain that it would be an unreasonable burden to require reporting adjustments that span two accounting systems. At an *ex parte* meeting of Common Carrier Bureau staff and a USTA task group on May 16, 1990, however, carrier representatives agreed that several of the rows could be reported in the previous enforcement period columns. They proposed to report data in the following rows: 3010, Net Revenues; and 4000, Average Net Investment, through 4060, Rate of Return Including Refund. Moreover, they advised that, although the breakdown of expenses and taxes called for in rows 3020 through 3060 would be burdensome, the aggregate total expenses and taxes could be reported. They proposed to report total expenses and taxes on row 3020 for the 1990 reports instead of total operating expenses. Under their proposal the breakdown of expenses and taxes called for on rows 3020 through 3060 and the investment data called for on rows 3070 through 3080 would not be reported for 1990. We feel that the loss of data for these seven rows is not serious enough to justify the burden and expense involved for the carriers to produce the data. Therefore, we agree that carriers may populate these rows with zeros for the 1990 Quarterly Report filings. Beginning with the first quarter of 1991, carriers shall report previous period adjustments for all rows on Table III.

C. Other Issues

12. In our *Order Inviting Comment* we proposed to remove " N/As" (i.e., designations of "not applicable") from rows 1630 through 1670 (Plant in Service) in column (o) (Equal Access), thus showing Equal Access Investment at the same level of disaggregation as the Equal Access Investment Reserves and Other Operating Expenses and Taxes. GTE and USTA oppose the proposal to collect these data at both the equal access level and the primary account level, arguing that such reporting would cause major problems in developing workable edit programs.[6] We disagree. The edit check will simply note that, in column (o) row 1610 (equal access) is the same amount as row 1690 (total plant) and that the total of rows 1620 through 1680 must equal the amount in row 1610 and row 1690.

13. SWB also argues that it should not be required to report equal access investment at the primary account level. It argues that Part 36 does not require disaggregation of equal access investment at that level. Section 36.191 requires that equal access investment be removed from the primary accounts and aggregated for separations purposes. Furthermore, the *Equal Access Accounting Order* [7] does not permit the aggregation of equal access investments for accounting purposes. It requires that these costs be recorded in the primary accounts and depreciated accordingly. Thus disaggregated equal access data are available in the carriers' records and we require that disaggregated equal access investment be reported in the Quarterly Report as proposed in our *Order Inviting Comment*.

14. GTE proposes that the N/As on a number of rows under the Common Line subcategories (columns (i)-(k)) be removed so that GTE can report the results of its allocation of revenues and taxes between these subcategories. GTE argues more generally that carriers should be allowed to override N/As. Our response to GTE's specific proposal is that the Commission's Rules do not require the allocation of revenues and taxes between the subcategories of Common Line and that, at this time, we have no regulatory need for these data. As to GTE's general request for permission to override N/As, we emphasize that carriers are not free to override the format of any of the ARMIS reports. Our experience has shown that reporting consistency is crucial to our ability to error-check the integrity of the data in the reports, and to compare the data of different companies.

15. USTA has proposed removing N/As from row 1370 (FCC Non-Operating Adjustment) for two columns, Subject to Separations and State. N/As were placed in these columns because FCC Non-Operating Adjustments apply only to interstate costs. Similar FCC adjustments for operating expenses, investment, and taxes also have N/As in those columns. USTA has not proposed removing the N/As for the other FCC Adjustment rows. We have decided to retain the N/As for the FCC Non-Operating Adjustments row so that all FCC adjustments will be reported on a consistent basis.

16. A number of minor technical changes, which no one objected to, are proposed by the commenting parties. We have reviewed these proposed changes and have decided to adopt them as follows: (1) to revise the proposed

general instructions for columns (b)-(d) (Total Company-SNFA and Intra-company Adjustments) to require that investment be reported as end-of-period instead of average-for-the-period data; (2) to remove the N/As from column (o) (Equal Access), row 1290 (Other Operating Income/Losses); rows 1340, 1350, 1360, 1370, and 1390 (Non-operating Items); and rows 1730, 1740, 1760 and 1770 (Other Investments) to allow carriers to show the details of the non-operating expenses and other investments that they are assigning to the Part 69 equal access sub-element; (3) to remove N/As from column (e) (All Other Adjustments), rows 1110 and 1610 (Equal Access Expenses and Investment), to allow carriers to report the difference in the amount of equal access costs on their books and the adjusted amounts that are removed under Part 36; (4) to remove row 1310 and include account 7520 in row 1510 (Fixed Charges), where it is grouped with other items that are treated for ratemaking purposes as deductions from net income in the calculation of taxable income; 5) to revise the instructions for row 1880 to include unfunded pension costs (account 4310); 6) to renumber row 1924 as 1925 to be consistent with the Quarterly Report's row numbering convention; 7) to move Other Jurisdictional Assets-Net (row 1810) from under the subheading Reserves to the subheading Other Investments to be consistent with Part 32, and renumber it row 1705; 8) to remove the N/A from column (q) (Information), row 1640 (COE-Switching) to allow carriers to report their assignment of switching investment to the Part 69 information sub-element; 9) to remove the N/A from column (c) (Non-regulated), row 1730 (Plant Acquisition Adjustment) to allow carriers to report the assignment of plant acquisition adjustments to their non-regulated activities; and, 10) to adopt clarified language for the instructions for Table I, column (f) (Subject to Separations); and Table II, rows 2020 and 2040 (Common Line Demand).

D. Filing Dates

17. The commenting parties requesting additional time for filing the Quarterly Report for the first quarter of 1990 maintain that ninety days after release of an ARMIS revision are necessary for the carriers to modify software and systems procedures, run validation checks, develop edit programs, and compile the reports. We have consulted with the industry and it is our belief that ninety days are not necessary for preparation of Tables I and II since they are not substantially changed. Therefore, we will allow sixty (60) days from the release date of this *Order* for filing Tables I and II, and ninety (90) days for Table III because it is a new Table. All subsequent Quarterly Reports must be filed on the dates specified in Section 43.22 of the Commission's Rules.

III. PAPERWORK REDUCTION ACT

18. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a modified information collection requirement on the public. The current Quarterly Reporting requirements are approved by the Office of Management and Budget but the modifications described herein are subject to approval by the Office of Management and Budget as prescribed by the Act.

IV. ORDERING CLAUSE

19. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. Section 154(i), that the Quarterly Report IS REVISED, as set forth in the Appendix hereto.

FEDERAL COMMUNICATIONS COMMISSION

Richard M. Firestone
Chief, Common Carrier Bureau

FOOTNOTES

[1] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), 2 FCC Rcd 5770 (1987) (*ARMIS Order*), *recon.*, 3 FCC Rcd 6375 (1988) (*ARMIS Reconsideration Order*), *further recon.*, 4 FCC Rcd 8240 (1989).

[2] Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), 3 FCC Rcd 3874 (Com.Car.Bur. 1988) (*First Quarterly Report Order*).

[3] The Commission's accounting rules permit such adjustment only to the extent permitted under generally accepted accounting principles. *See* Sections 32.1, 32.12 and 32.25.

[4] The analysis of adjustments referred to here was based upon data reported in the Rate of Return Report, i.e., the 492 Reports. Although these reports show very little detail, they do show the overall effect of the adjustments.

[5] Part 32 became effective on January 1, 1988. *See* Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules), 51 F.R. 24745, July 8, 1986 and 51 F.R. 43493, December 2, 1986, *recon.*, 2 FCC Rcd 1086 (1987).

[6] The Commission has developed programs which edit the reported data to ensure its reliability.

[7] Petitions for Recovery of Equal Access and Network Reconfiguration Costs, FCC 85-628 (released December 9, 1985) (*Equal Access Accounting Order*).

APPENDIX

This document provides the instructions for FCC Report 43-01, the ARMIS Quarterly Report, which was adopted by the Commission in CC Docket No. 86-182. The instructions consist of the following two sections, which are attached:

1. Reporting Procedures - details on the specific procedures to be followed when submitting this report to the Commission.

2. Report Definition - an illustration of the rows and columns to be reported and their definitions.

3. Automated Report Specifications - the detailed automated data processing (ADP) specifications for the automated report to be filed.

4. Paper Report Specifications - the detailed specifications for the paper report to be filed.

5. COSA Code Table - the list of four letter COSA codes (CO = Company, SA = Study Area).

NOTE: These instructions supersede and completely replace the previous instructions, dated August 1989.

A. Introduction

This document contains details on the specific procedures to be followed when submitting FCC Report 43-01, the ARMIS Quarterly Report, to the Commission.

B. General Information

1. FCC Report 43-01 was adopted by the Commission in the ARMIS Order, Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies (Parts 31, 43, 67, and 69 of the FCC's Rules), CC Docket No. 86-182, 2 FCC Rcd 5770 (1987). The report is prescribed for every local exchange carrier with operating revenues for the preceding year in excess of $100 million.

2. Affected carriers shall file by March 31, June 30, September 30 and December 31 of each year the report for the previous calendar quarter. The initial report in this revised format will be filed in September 1990 and will contain data for the first quarter of calendar year 1990.

3. The report shall be filed on a study area (jurisdiction) basis.

4. Carriers seeking proprietary treatment for some data must provide two versions of each paper and automated report. The Confidential Version must contain all the required information (Confidential Treatment Tables/Data Records are provided to identify confidential data). The Public Version should not include data for which the carrier is seeking proprietary treatment. The carrier should **prominently** label the paper report and the diskette containing information subject to a claim of confidentiality to prevent inadvertent disclosure.

5. Carriers not seeking proprietary treatment for any data should provide only one version of each paper report and diskette, and the paper report and the diskette should be labeled the Unrestricted Version.

6. The Confidential Treatment Tables/Data Records are to be included in all reports but are not a substitute for applying for confidential treatment with this Commission following established Commission procedures.

7. Each report and diskette must be clearly labeled to include the report number, company, study area, period, COSA code, version and submission number. The report number is 43-01, which identifies the filing as the ARMIS Quarterly Report. The period identifies the year and quarter covered by the data. See the attached COSA Code Table (CO = Company, SA = Study Area) for a list of companies and their respective COSAs. The version refers to whether the filing is the Confidential, Public or Unrestricted Version. The submission number is defined as follows: Submission 0 is for test data purposes only. Submission 1 is the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if

needed for successive revisions to correct that quarter's submission.

8. All correspondence and pleadings shall identify the proceeding as CC Docket 86-182.

C. **Data Items That Are "Not Available" or Are "Withheld"**

1. The term "Not Available" is used below to refer only to those items which the Commission has ruled are not applicable to a particular row/column or are not required for a particular filing entity. The Confidential Version must contain values for all of the data items except those items which are "Not Available." If, in addition to the required study area reports, a carrier submits a report which combines data for more than one study area, and this report includes a field such as a sum, a ratio, or a percentage that cannot be computed completely and accurately because it relies on another item which the Commission has ruled is a "Not Available" item, then that field is also considered to be "Not Available."

2. The term "Withheld" is used below to refer only to those items for which the carrier has applied for confidential treatment with the Commission and is only applicable to the Public Version. If a field such as a sum, a ratio or a percentage relies on an item or items which have been withheld and that field is not also withheld, then it must include the withheld amount. For example, a carrier could withhold the individual values for two of three numbers which are totaled. If the carrier does not also apply for confidential treatment for the total, then that total must be the sum of all three numbers, not just the one which was not withheld. The Public Version must contain values for all of the data items except those items which are "Not Available" or those items which have been "Withheld."

3. See paragraph C.5 in the attached Automated Report Specifications for data entry conventions for these items.

D. **Where to File**

1. Carriers submitting FCC Report 43-01 should consult the schedule below which details the number of copies required and the location to which those copies should be delivered.

2. Carriers are reminded that they must serve a copy of either the Unrestricted Version or the Public Version of both the paper report and the automated report (diskette) on the FCC's contractor for public records duplication, International Transcription Services, Inc., (ITS). These copies should be mailed to the attention of Wilbur Thomas of ITS at Suite 140, 2100 M Street, N.W., Washington, D.C. 20037 or delivered to ITS in Room 246 at FCC Headquarters, 1919 M Street, N.W., Washington, D.C. 20036.

NUMBER OF COPIES

FOR CARRIERS SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Confidential Paper Report	Confidential Automated Report (diskette)	Public Paper Report	Public Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	-	-	1	1

FOR CARRIERS NOT SEEKING PROPRIETARY TREATMENT

	Transmittal Letter	Unrestricted Paper Report	Unrestricted Automated Report (diskette)
FCC Secretary Room 222 1919 M Street, N.W. Washington, D.C. 20554	1	-	-
FCC Common Carrier Bureau Accounting & Audits Division 2000 L Street, N.W. Washington, D.C. 20554	1	1	1
ITS - Room 246 ATTN: Wilbur Thomas 1919 M Street, N.W. Washington, D.C. 20036	1	1	1

E. **Footnotes**

1. If any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances, then include footnote text to explain the specific circumstances.

2. If the reporting carrier does not follow the procedures described in the row and column instructions of the attached Report Definition, it must explain any deviations from those procedures in an explanatory footnote. Such footnotes must provide detailed explanations of the procedures actually used by the carrier and its specific reasons for deviating from the procedures prescribed by the Commission's rules.

3. Significant out-of-period adjustments must be footnoted and fully explained.

4. Do not include explanatory footnotes in the transmittal letter. The footnote text must be included in the Footnote Text Records and the Footnote Table as specified in the Automated Report Specifications.

F. **Errata**

1. Carriers are under a legal obligation to correct any erroneous data discovered in FCC Report 43-01. Submissions containing corrected data must include references to indicate which data items were corrected since the previous submission.

2. These references must be included in the Erratum Records and the Erratum Table as specified in the Automated Report Specifications.

G. **Certification**

1. Carriers must certify the accuracy of the data submitted in FCC Report 43-01 by including a signed certification statement as the last page of the paper report.

2. The text of the certification statement is included on page 24 of 24 in the attached report definition.

H. **Waivers**

1. If a carrier determines that it will be unable to provide data required by FCC Report 43-01, it must file an application for waiver with the Commission following established Commission procedures. All such requests from a carrier should be included in a single application. The application must demonstrate good cause for reporting a different or lower level of detail and indicate how these deficiencies will be corrected.

2. Omission of individual data items or entries, without request for waiver, is unacceptable. One reason that compliance with the full requirements is so important is that omission of any single data entry by any carrier will jeopardize the accuracy of aggregate industry information.

I. **Public Information**

1. The Public or Unrestricted Versions of the paper reports filed as Report 43-01 may be examined by the public from 9:00 to 11:00 a.m. and from 2:00 to 4:00 p.m., Monday through Friday, in Room 812, 2000 L Street, N.W., Washington, D.C.

2. Copies of the Public or Unrestricted Versions of the paper or automated reports filed as FCC Report 43-01 may be obtained from the FCC's contractor for public records duplication, ITS. Parties should contact Wilbur Thomas of ITS at (202) 857-3800.

For further information regarding these procedures, contact:

Barbara Van Hagen
FCC Common Carrier Bureau
Accounting & Audits Division
(202) 634-1861

Estimated Average Burden Hours Per Response: 220 hours

SUMMARY

This document provides the Report Definition for FCC Report 43-01, the ARMIS Quarterly Report, and lists the revenue, revenue requirement, and demand data which must be provided quarterly by study area. It contains the following:

	Pages
Table I - Cost and Revenue Table	3 thru 4
Table II - Demand Analysis Table	5
Table III - Restated Data Table	6 thru 8
Table I - Row Instructions	9 thru 15
Table I - Column Descriptions	16 thru 18
Table II - Demand Analysis Table Definitions	19 thru 20
Table III - Row Instructions	21 thru 23
Table III - Column Descriptions	23
Certification	24

All monetary figures must be rounded to the nearest thousand dollars. All rate of return and percentage amounts (Rate of Return, Rate of Return including Refund and tax rate) must be entered in percent and must be rounded to 2 decimal places. All minutes of use figures must be rounded to the nearest thousand; all access line figures must be provided to the nearest whole number. The Rate of Return Multiplicative Factor must be rounded to four decimal places.

Items which need not be reported because they do not apply are designated by N/A. DO NOT override N/As. If a reporting carrier should wish to apply data to a field containing an N/A, the carrier should enter the amount(s) and an explanation as a footnote to the field. The amount(s) must not be entered in an N/A'd field. All other fields must be populated. If there are no data applicable to an open field, enter zero.

Do not include explanatory notes in the transmittal letter; such notes must be included in the Footnotes section of the filing.

This report definition supersedes all previously released report definitions. Please DO NOT use older report definition releases for preparation of FCC Form 43-01.

NOTICE: The ARMIS Quarterly Report collects highly aggregated financial data reflecting the results of accounting, rate base, and cost allocation requirements prescribed in Parts 32, 64, 65, 36 and 69. This report also includes a demand analysis table containing interstate access demand data and a summary data table to capture the financial impact of prior-period-adjustments that have been made since the last quarterly report. The ARMIS Quarterly Report specifies information requirements in a consistent format and is essential to the FCC to monitor revenue requirements, rate of return, jurisdictional separations and access charges. Your response is mandatory.

Public reporting burden for this collection of information is estimated to average 220 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to the Federal Communications Commission, Office of Managing Director, Washington DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

FCC REPORT 43-01
ANNIE QUARTERLY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
CODE: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification (a)	Total (b)	Nonreg (c)	NTA and Intra-co Adjustments (d)	All Other Adjustments (e)	Subject to Separations (f)	State (g)	Interstate (h)	Common Line			
									Pay (i)	Inside Wire (j)	NTP (k)	Total (m)
	Revenue											
1010	Basic Local Service		N/A						N/A	N/A	N/A	N/A
1020	Network Access Services		N/A						N/A	N/A	N/A	
1030	Toll Network Services		N/A						N/A	N/A	N/A	
1040	Miscellaneous								N/A	N/A	N/A	
1050	Settlements		N/A						N/A	N/A	N/A	
1060	Uncollectibles								N/A	N/A	N/A	
1090	Net Revenues								N/A	N/A	N/A	
	Expenses											
1110	Equal Access Expenses	N/A							N/A	N/A	N/A	N/A
1120	Plant Specific											
1130	Plant Non-Specific											
1140	Customer Operations Marketing											
1150	Customer Operations Services											
1160	Corporate Operations											
1170	Access		N/A									
1180	Depreciation/Amortization											
1185	FCC Expense Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					
1190	Total Operating Expenses											
	Other Operating Items											
1290	Other Operating Income/Losses											
	Non-operating Items											
1320	Inc Effect/Jurisdiction Differenc		N/A	N/A				N/A	N/A	N/A	N/A	N/A
1330	Extraordinary Items											
1340	AFUDC											
1350	Special Charges											
1360	All Other Non-operating Items											
1370	FCC Non-operating Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					
1390	Total Non-operating Items											
	Other Taxes											
1410	State and Local Income								N/A	N/A	N/A	
1420	Other State and Local								N/A	N/A	N/A	
1490	Total Other Taxes								N/A	N/A	N/A	
	Federal Income Taxes											
1510	Fixed Charges											
1520	IRS Income Adjustment		N/A									
1530	FCC Taxable Income Adjustment	N/A	N/A		N/A	N/A	N/A					
1540	ITC Amortization											
1550	FCC ITC Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					
1590	Federal Income Taxes								N/A	N/A	N/A	
	Plant-in-Service											
1610	Equal Access Investment	N/A							N/A	N/A	N/A	N/A
1620	Support Plant											
1630	Operator Systems Equipment								N/A	N/A	N/A	N/A
1640	COE-Switching								N/A	N/A	N/A	N/A
1650	COE-Transmission									N/A		
1660	Cable and Wire Facilities									N/A		
1670	IOT Equipment											
1680	Amortizable Assets											
1690	Total Plant											
	Other Investments											
1705	Other Jurisdictional Assets-Net		N/A	N/A					N/A	N/A	N/A	N/A
1710	Property Held for Future Use											
1720	Plant Under Construction											
1730	Plant Acquisition Adjustment			N/A								
1740	Investment in Nonaffiliated Cos											
1750	Other Deferred Charges											
1760	Inventories											
1770	Cash Working Capital	N/A	N/A	N/A	N/A	N/A	N/A					
1780	FCC Investment Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					
1790	Total Other Investments											
	Reserves											
1820	Accumulated Depreciation											
1830	Accumulated Amortization											
1840	Deferred FIT											
1850	Customer Deposits											
1870	Other Deferred Credits											
1880	Other Juris Liab & Deferr Crs-Net		N/A	N/A								
1885	FCC Reserve Adjustment	N/A	N/A	N/A	N/A	N/A	N/A					
1890	Total Reserves											
	Return Data											
1910	Average Net Investment	N/A	N/A	N/A	N/A							
1915	Net Return	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
1920	Rate of Return	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
1925	FCC Ordered Refund	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
1926	Refund Adjusted for Taxes	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
1930	Net Return Including FCC Refund	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
1935	Rate of Return (including refund)	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
	Miscellaneous Data											
1950	Lifeline Adjustment	N/A	N/A	N/A	N/A				N/A	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A	N/A				N/A	N/A	N/A	N/A
1970	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	
1980	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A	

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
STUDY AREA: xxxxxxxxxxxxxxxxxxx
PERIOD: From mmm yyyy To mmm yyyy
COSA: xxxx

xxxxxxxxxxx VERSION
SUBMISSION x
TABLE I
PAGE

TABLE I - COST AND REVENUE TABLE
(Dollars in thousands)

Row	Classification (a)	Traffic Sensitive: Switching (n)	Traffic Sensitive: EqualAccess (o)	Traffic Sensitive: Transport (p)	Traffic Sensitive: Information (q)	Traffic Sensitive: Total (r)	Special Access (s)	Total Access (t)	Billing & Collection (u)	IX (v)
	Revenues									
1010	Basic Local Service	N/A	N/A	N/A	N/A	N/A			N/A	N/A
1020	Network Access Services								N/A	
1030	Toll Network Services								N/A	
1040	Miscellaneous		N/A							
1050	Settlements									
1060	Uncollectibles									
1090	Net Revenues									
	Expenses									
1110	Equal Access Expenses				N/A		N/A		N/A	N/A
1120	Plant Specific									
1130	Plant Non-Specific									
1140	Customer Operations Marketing									
1150	Customer Operations Services									
1160	Corporate Operations									
1170	Access								N/A	
1180	Depreciation/Amortization									
1185	FCC Expense Adjustment									
1190	Total Operating Expenses									
	Other Operating Items									
1290	Other Operating Income/Losses									
	Non-operating Items									
1320	Inc Effect/Jurisdiction Differenc	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1330	Extraordinary Items		N/A							
1340	AFUDC									
1350	Special Charges									
1360	All Other Non-operating Items									
1370	FCC Non-operating Adjustment									
1390	Total Non-operating Items									
	Other Taxes									
1410	State and Local Income									
1420	Other State and Local									
1490	Total Other Taxes									
	Federal Income Taxes									
1510	Fixed Charges									
1520	IRS Income Adjustment									
1530	FCC Taxable Income Adjustment									
1540	ITC Amortization									
1550	FCC ITC Adjustment									
1590	Federal Income Taxes									
	Plant-in-Service									
1610	Equal Access Investment				N/A		N/A		N/A	N/A
1620	Support Plant									
1630	Operator Systems Equipment						N/A		N/A	
1640	COE-Switching								N/A	
1650	COE-Transmission	N/A			N/A				N/A	
1660	Cable and Wire Facilities	N/A			N/A				N/A	
1670	IOT Equipment	N/A		N/A	N/A	N/A			N/A	N/A
1680	Amortizable Assets									
1690	Total Plant									
	Other Investments									
1705	Other Jurisdictional Assets-Net	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1710	Property Held for Future Use									
1720	Plant Under Construction									
1730	Plant Acquisition Adjustment									
1740	Investment in Nonaffiliated Cos									
1750	Other Deferred Charges									
1760	Inventories									
1770	Cash Working Capital									
1780	FCC Investment Adjustment									
1790	Total Other Investments									
	Reserves									
1820	Accumulated Depreciation									
1830	Accumulated Amortization									
1840	Deferred FIT									
1850	Customer Deposits									
1870	Other Deferred Credits									
1880	Other Juris Liab & Deferr Crs-Net									
1885	FCC Reserve Adjustment									
1890	Total Reserves									
	Return Data									
1910	Average Net Investment								N/A	
1915	Net Return								N/A	N/A
1920	Rate of Return								N/A	N/A
1925	FCC Ordered Refund								N/A	N/A
1926	Refund Adjusted for Taxes								N/A	N/A
1930	Net Return Including FCC Refund								N/A	N/A
1935	Rate of Return (including refund)								N/A	N/A
	Miscellaneous Data									
1950	Lifeline Adjustment	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1960	Universal Service Fund	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
1970	Common Line Support-Long Term	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A
1980	Common Line Support-Transitional	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

COMPANY:	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx	xxxxxxxxxxxx VERSION
STUDY AREA:	xxxxxxxxxxxxxxxxxxxx	SUBMISSION x
PERIOD:	From mmm yyyy To mmm yyyy	TABLE II
COSA:	xxxx	PAGE 1 OF 1

TABLE II - DEMAND ANALYSIS TABLE
(Minutes in thousands, Lines in whole numbers)

MONTHLY DATA - END OF QUARTER VIEW

Row	Classification (a)	Month 1 (b)	Month 2 (c)	Month 3 (d)
	COMMON LINE DEMAND-MOU			
	Premium:			
2010	Originating			
2020	Terminating			
	Non-Premium:			
2030	Originating			
2040	Terminating			
	SWITCHED TRAFFIC SENS. DEMAND-MOU			
2050	Premium			
2060	Non-Premium			

QUARTERLY DATA

Row	Classification (aa)	Quarter x (ab)
	COMMON LINE DEMAND	
2090	Single Line Business C. P. T.	
2100	Residence CPT Lifeline	
2110	Residence CPT Non-Lifeline	
2120	Multiline Business-Centrex Co & CTX Like	
2140	Special Access Lines Subject to Surcharge	
2150	Total Billable Access Lines	

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: Reporting Period Ending mmm yyyy TABLE III
COSA: xxxx PAGE 1.1 of 1.3

TABLE III - RESTATED DATA TABLE
(Dollars in thousands)

		Subject to Separations		
Row	Classification	Current Quarter	EP to Date	Previous EP
	(a)	(b)	(c)	(d)
3010	Net Revenues			
3020	Total Operating Expenses			
3030	Other Operating Income/Losses			
3040	Total Non-Operating Items			
3050	Total Other Taxes			
3060	Total Federal Income Taxes			
3070	Total Plant-in-Service			
3080	Total Other Investments			
3090	Total Reserves			
4000	Average Net Investment			
4010	Net Return	N/A	N/A	N/A
4020	Rate of Return	N/A	N/A	N/A
4030	FCC Ordered Refund	N/A	N/A	N/A
4040	Refund Adjusted for Taxes	N/A	N/A	N/A
4050	Net Return Including FCC Refund	N/A	N/A	N/A
4060	Rate of Return Including Refund	N/A	N/A	N/A

		Interstate Access		
Row	Classification	Current Quarter	EP to Date	Previous EP
	(a)	(e)	(f)	(g)
3010	Net Revenues			
3020	Total Operating Expenses			
3030	Other Operating Income/Losses			
3040	Total Non-Operating Items			
3050	Total Other Taxes			
3060	Total Federal Income Taxes			
3070	Total Plant-in-Service			
3080	Total Other Investments			
3090	Total Reserves			
4000	Average Net Investment			
4010	Net Return			
4020	Rate of Return			
4030	FCC Ordered Refund			
4040	Refund Adjusted for Taxes			
4050	Net Return Including FCC Refund			
4060	Rate of Return Including Refund			

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: Reporting Period Ending mmm yyyy TABLE III
COSA: xxxx PAGE 1.2 of 1.3

TABLE III - RESTATED DATA TABLE
(Dollars in thousands)

		Common Line		
Row	Classification	Current Quarter	EP to Date	Previous EP
	(a)	(h)	(i)	(j)
3010	Net Revenues			
3020	Total Operating Expenses			
3030	Other Operating Income/Losses			
3040	Total Non-Operating Items			
3050	Total Other Taxes			
3060	Total Federal Income Taxes			
3070	Total Plant-in-Service			
3080	Total Other Investments			
3090	Total Reserves			
4000	Average Net Investment			
4010	Net Return			
4020	Rate of Return			
4030	FCC Ordered Refund			
4040	Refund Adjusted for Taxes			
4050	Net Return Including FCC Refund			
4060	Rate of Return Including Refund			

		Traffic Sensitive		
Row	Classification	Current Quarter	EP to Date	Previous EP
	(a)	(k)	(l)	(m)
3010	Net Revenues			
3020	Total Operating Expenses			
3030	Other Operating Income/Losses			
3040	Total Non-Operating Items			
3050	Total Other Taxes			
3060	Total Federal Income Taxes			
3070	Total Plant-in-Service			
3080	Total Other Investments			
3090	Total Reserves			
4000	Average Net Investment			
4010	Net Return			
4020	Rate of Return			
4030	FCC Ordered Refund			
4040	Refund Adjusted for Taxes			
4050	Net Return Including FCC Refund			
4060	Rate of Return Including Refund			

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: Reporting Period Ending mmm yyyy TABLE III
COSA: xxxx PAGE 1.3 of 1.3

TABLE III - RESTATED DATA TABLE
(Dollars in thousands)

		Special Access		
		Current	EP to	Previous
Row	Classification	Quarter	Date	EP
	(a)	(n)	(o)	(p)
3010	Net Revenues			
3020	Total Operating Expenses			
3030	Other Operating Income/Losses			
3040	Total Non-Operating Items			
3050	Total Other Taxes			
3060	Total Federal Income Taxes			
3070	Total Plant-in-Service			
3080	Total Other Investments			
3090	Total Reserves			
4000	Average Net Investment			
4010	Net Return			
4020	Rate of Return			
4030	FCC Ordered Refund			
4040	Refund Adjusted for Taxes			
4050	Net Return Including FCC Refund			
4060	Rate of Return Including Refund			

RELATED DATA

Row	Classification	Amount
	(a)	(q)
5000	Tax Rate	
5010	ROR Multiplicative Factor	

TABLE I - COST AND REVENUE TABLE

GENERAL INSTRUCTIONS

Table I requires the quarterly reporting of data on a current year to date basis - for 20 columns and for 73 rows that contain revenue, expense, reserve and investment data for all aspects of the carriers' operations.

ROW INSTRUCTIONS

Each row is an element related to a study area's revenue or revenue requirement.

Row	Item Description
	Revenues
1010.	Basic Local Service - The total of accounts 5001 through 5060.
1020.	Network Access Services - The total of accounts 5081 through 5084.
1030.	Toll Network Services - The total of accounts 5100, 5110 and 5121 through 5160, exclusive of account 5129.
1040.	Miscellaneous - The total of accounts 5230 through 5250, 5261 through 5264, 5270 and 5280.
1050.	Settlements - The total of accounts 5069, 5129, 5169 and 5269. Carriers which do not retain the Class A accounts throughout separations and access reporting will include these amounts in the Class B accounts reported on rows 1010, 1030 and 1040.
1060.	Uncollectibles - The total of accounts 5301 and 5302.
1090.	Net Revenues - The total of rows 1010 through 1050 less row 1060.
	Expenses
1110.	Equal Access - This amount is equal to the total of all amounts that have been removed from the primary expense accounts pursuant to Section 36.421. Such expenses include only those expenses which are directly related to the provision of equal access. Equal access expenses must be reported on this row in the following columns, as appropriate: columns (e), (f), (g), (h) and (o) (if the reporting carrier has an equal access rate element) or, columns (n) and (p) (if the reporting carrier does not have an equal access rate element), and in columns (r) and (t). Total company equal access expenses must be included on rows 1120 through 1185, except row 1170, for column (b) and must be adjusted out of these rows in column (e). In column (o) these expenses must be included in rows 1110 through 1190, except row 1170. In column (o) row 1110 will equal the same amount as row 1190. The total of rows 1120 through 1185 will equal the same amount as row 1110 and row 1190. (Do not include rows 1120 through 1185 in row 1190 because the total of these rows is already included on row 1110.)

1120. Plant Specific - The total of accounts 6112 through 6116, 6121 through 6124, 6211 through 6220, 6231, 6232, 6311 through 6362, and 6411 through 6441.

1130. Plant Non-Specific - The total of accounts 6511, 6512 and 6531 through 6535.

1140. Customer Operations Marketing - The total of accounts 6611 through 6613.

1150. Customer Operations Services - The total of accounts 6621 through 6623.

1160. Corporate Operations - The total of accounts 6711, 6712, 6721 through 6728 and 6790.

1170. Access - The balance of account 6540.

1180. Depreciation/Amortization - The total of accounts 6561 through 6565.

1185. FCC Expense Adjustment - This amount shall contain the net of: (1) expense and other tax items not included above which the Commission has expressly allowed for ratemaking purposes; and (2) expense and other tax items included above which the Commission has expressly excluded for ratemaking purposes. A positive value represents a net allowance and a negative value represents a net disallowance.

1190. Total Operating Expenses - The total of rows 1110 through 1185. In column (o) this amount equals the total of rows 1120 through 1185.

Other Operating Items

1290. Other Operating Income/Losses - This amount shall contain the net of accounts 7110 through 7160 and 7990. A positive value represents income and a negative value represents loss.

Non-operating Items

1320. Income Effects of Jurisdictional Ratemaking Differences (Net) - The balance of account 7910. A positive value represents an increase to net income and a negative value represents a decrease to net income.

1330. Extraordinary Items - The total of accounts 7610 through 7640. Amounts excluded from ratemaking are removed in row 1370. A positive value represents an income credit and a negative value represents an income charge.

1340. Allowance for Funds Used During Construction - The balance of account 7340. Amounts excluded from ratemaking are removed in row 1370.

1350. Special Charges - The balance of account 7370. Amounts excluded from ratemaking are removed in row 1370.

1360. All Other Non-operating Items - The total of accounts 7310 through 7330, 7350 and 7360. Amounts excluded from ratemaking are removed in row 1370. A positive value represents income and a negative value represents a loss.

1370. FCC Non-operating Adjustment - This amount shall contain the net of: (1) non-operating items not included above which the Commission has expressly allowed for ratemaking purposes; and (2) non-operating items included above which the Commission has expressly excluded for ratemaking purposes. A positive value represents a net allowance and a negative value represents a net disallowance.

1390. Total Non-operating Items - The total of rows 1350 and 1370 less rows 1320, 1330, 1340 and 1360.

Other Taxes

1410. State and Local Income - The total of accounts 7230 and the appropriate portion of account 7250 for column (b). For column (c) enter the amount calculated pursuant to the reporting carrier's Cost Allocation Manual. Enter the amount applicable to SNFAs and intra-company transactions in column (d). For columns (f) through (v) allocate this amount between the state and interstate jurisdictions pursuant to Section 36.412, and allocate the interstate amount among the access elements pursuant to Section 69.402(a).

1420. Other State and Local - The balance of account 7240 for column (b). For column (c) enter the amount calculated pursuant to the reporting carrier's Cost Allocation Manual. Enter the amount applicable to SNFAs and intra-company transactions in column (d). Calculate this amount for the remaining columns pursuant to Section 36.412.

1490. Total Other Taxes - The total of rows 1410 and 1420.

Federal Income Taxes

1510. Fixed Charges - The amount of fixed charges (accounts 7510, 7520, 7530 and 7540) attributable to the operations is obtained by subtracting the tax component (positive or negative) attributable to nonoperating fixed charges (the ratio of nonoperating investment to total investment). Enter only the amount attributable to operating fixed charges in this row.

1520. IRS Income Adjustment - This amount is the difference between taxable income reported for IRS purposes and the taxable income shown in accordance with Part 32. A positive value represents a net increase to taxable income and a negative value represents a net decrease to taxable income.

1530. FCC Taxable Income Adjustment - This shall contain the net of: (1) taxable income not included above which the Commission has expressly allowed for ratemaking purposes; and (2) taxable income included above which the Commission has expressly excluded for ratemaking purposes. A positive value represents a taxable income allowance and a negative value represents a taxable income disallowance.

1540. Investment Tax Credit Amortization - Enter the unamortized balance of account 7210 in columns (b) and (c). Enter the amortized balance of account 7210 in columns (d) and (f) through (v).

1550. FCC Investment Tax Credit Adjustment - This shall contain the net of: (1) ITC not included above which the Commission has expressly allowed for ratemaking purposes; and (2) the ITC included above which the Commission has expressly excluded for ratemaking purposes. A positive value represents a net allowance to amortized investment tax credit and a negative value represents a net disallowance.

1590. Net Federal Income Taxes - For column (b), enter the total of accounts 7220 and the appropriate portion of 7250 minus the amorized amount of account 7210. For column (c) enter the amount calculated pursuant to the reporting carrier's Cost Allocation Manual. For column (e) this amount is the total of rows 1510 and 1540. For columns (d) and (f) through (v), calculate this amount by applying the applicable statutory federal income tax rate to the adjusted taxable income (row 1090 plus rows 1290, 1520 and 1530 less rows 1190, 1390, 1490, 1510) less rows 1540 and 1550). (i.e., tax rate x 1070 + 1290 + 1520 + 1530 - 1190- 1390 -1490 - 1510 - [1540 - 1550].)

Plant-in-Service

All investment data reported in columns (f) through (v) must be calculated by one of two methods: (1) divide the sum of average monthly investments by the number of months in the reporting period; (2) divide the sum of the investment balance for the end of the previous year and the end of the month investment balances for each month in the current reporting period by the number of months in the reporting period plus 1. Investment data reported in columns (b), (c) and (d) are reported as booked.

1610. Equal Access Investment - This amount is equal to the total of all amounts that have been removed from the primary investment accounts pursuant to Section 36.191. Such investment includes only that investment which is directly related to the provision of equal access. Equal access investment must be reported on this row in the following columns, as appropriate: columns (e), (f), (g), (h) and (o) (if the reporting carrier has an equal access rate element) or, columns (n) and (p) (if the reporting carrier does not have an equal access rate element), and in columns (r) and (t). Total company equal access investment must be included on rows 1620 through 1680 for column (b) and must be adjusted out of these rows in column (e). In column (o) these investments must be included in rows 1610 through 1690. In column (o) row 1610 will equal the same amount as row 1690. The total of rows 1620 through 1680 will equal the same amount as row 1610 and row 1690. (Do not include rows 1620 through 1680 in row 1690 because the total of these rows is already included on row 1610.

1620. Support Plant - The total of accounts 2111 through 2124.

1630. Operator Systems Equipment - The balance of account 2220.

1640. Central Office Equipment-Switching - The total of accounts 2211 though 2215.

1650. Central Office Equipment-Transmission - The total of accounts 2231 and 2232.

1660. Cable and Wire Facilities - The total of accounts 2411 through 2441.

1670. Information Origination/Termination Equipment - The total of accounts 2311 through 2362.

1680. Amortizable Assets - The total of accounts 2681, 2682 and 2690.

1690. Total Plant - The total of rows 1610, 1620, 1630, 1640, 1650 1660, 1670 and 1680. In column (o) this amount equals the total of rows 1620, 1630, 1640, 1650, 1660, 1670 and 1680.

Other Investments

1705. Other Jurisdictional Assets-Net - The balance of Account 1500. A positive value represents a reduction to assets and a negative value represents an increase to assets.

1710. Property Held for Future Telecommunications Use - The balance of account 2002.

1720. Telecommunications Plant Under Construction - The total of accounts 2003 and 2004. Amounts excluded from ratemaking are removed in row 1780.

1730. Plant Acquisition Adjustment - The balance of account 2005. Amounts excluded from ratemaking are removed in row 1780.

1740. Investment in Nonaffiliated Companies - The balance of account 1402. The amount directly related to Class B Rural Telephone Bank Stock shall be included in the rate base. Amounts excluded from ratemaking are removed in row 1780.

1750. Other Deferred Charges - The balance of accounts 1438 and 1439. Amounts excluded from ratemaking are removed in row 1780.

1760. Inventories - The balance of account 1220.

1770. Cash Working Capital - This amount equals that portion of investment required to meet current expenses. The calculation of this amount shall take into account revenue and expense items which are received or paid for before the service is rendered and expense items received or disbursed after the service is rendered. This amount must be developed pursuant to CC Docket 86-497.

1780. FCC Investment Adjustment - This amount shall contain the net of: (1) investment items not included above which the Commission has expressly allowed for ratemaking purposes; and (2) investment items included above which the Commission has expressly excluded for ratemaking purposes. A positive value represents a net asset allowance and a negative value represents a net disallowance.

1790. Total Other Investments - The total of rows 1705 through 1780.

Reserves

1820. Accumulated Depreciation - The total of accounts 3100 and 3200.

1830. Accumulated Amortization - The total of accounts 3410, 3420, 3500 and 3600.

1840. Deferred Federal Income Taxes - The total of accounts 4100 and 4340.

1850. Customer Deposits - The balance of account 4040. This amount is separated between state and interstate by application of the interstate plant factor or special study. The interstate plant factor is calculated by dividing interstate plant-in-service by total plant-in-service.[1]

1870. Other Deferred Credits - The balance of account 4360. Amounts excluded from ratemaking are removed in row 1885.

1880. Other Jurisdictional Liabilities and Deferred Credits-Net - The balance of accounts 4310 and 4370.

1885. FCC Reserve Adjustment - This amount shall contain the net of: (1) reserve items not included above which the Commission has expressly included for ratemaking purposes; and (2) reserve items included above which the Commission has expressly excluded for ratemaking purposes. A positive value represents a net reserve allowance and a negative value represents a net reserve disallowance.

1890. Total Reserves - The total of rows 1820 through 1885.

Return Data

1910. Average Net Investment - The total of rows 1690 and 1790 less row 1890.

1915. Net Return - The total of rows 1090 and 1290 less rows 1190, 1390, 1490 and 1590.

1920. Rate of Return - Line 1915 divided by line 1910, multiplied by the appropriate annualizing factor, times 100.

1925. FCC Ordered Refund - This amount should be developed in accordance with CC Docket 84-800, Phase I.

1926. Refund Adjusted for Taxes - To calculate this amount multiply row 1925 by the tax rate (see Table III, row 5000) and subtract the result from row 1925.

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1 This method for separation of customer deposits between state and interstate will be used as an interim measure until such time as provision is made for separation of customer deposits in Part 36 of the Commission's Rules. See Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers, Report and Order, 3 FCC Rcd 269 (1987).

1930. Net Return Including FCC Refund - The total of lines 1915 and 1926.

1935. Rate of Return Including FCC Refund - Line 1930 divided by line 1910, multiplied by the appropriate annualizing factor, times 100.

Miscellaneous Data

1950. Lifeline Adjustment - Enter this amount pursuant to Part 36.701.

1960. Universal Service Fund - Carriers with higher than average non-traffic-sensitive loop costs must report their interstate allocation, as reported to NECA for this reporting period, on this line.

1970. Common Line Support-Long Term - Enter the amount of long term support submitted to NECA pursuant to Part 69.112(a). This item is a negative amount.

1980. Common Line Support-Transitional - Enter the amount of transitional support received (positive amount) or disbursed (negative amount) pursuant to Part 69.112(b).

TABLE I - COLUMN DESCRIPTIONS

Each column is a cost category, access element, or summary thereof, specified in the Commission's Rules. Columns (b), (c) and (d) shall be reported as booked. Column (e) shall contain the off-book adjustments necessary to arrive at the amount subject to separations. The remaining columns shall be reported as adjusted.

Column	Description
b.	Total - This column reflects the operating results for each of the rows itemized in this report, and includes all regulated and nonregulated company operations for each row. These amounts are represented prior to separation between state and interstate jurisdictions and are reported as booked.
c.	Nonregulated - This column reflects the amount of each row pertaining to nonregulated activities in compliance with Docket 86-111. These amounts are reported as booked.
d.	SNFA and Intra-company Adjustments - This column reflects adjustments made to each row for costs related to shared network facility arrangements and intra-company subsidiary contracts. These amounts are reported as booked.
e.	All Other Adjustments - This column reflects all remaining adjustments such as: prior period adjustments and accounting adjustments necessary to arrive at the amount subject to separation. In addition, adjustments to accommodate reallocation of common power costs in Part 36 from the assignment method used in Part 32 should be entered in this column. The affected rows are 1630, 1640 and 1650. Although the reallocation of common power costs between COE categories does not occur until COE is jurisdictionally separated, the adjustments for the reallocated cost must be entered in column (e) and the amount as adjusted for reallocation must be entered in column (f) to preserve the linear integrity of the Quarterly Report. If these adjustments are not entered in column (e), and the adjusted amount is not entered in column (f), column (h) will not equal columns (t) plus (u) plus (v) on these rows. Please footnote the amount(s) of common power cost dollar shifts.
f.	Subject to Separations - This column reflects that portion of each row that must be allocated between state and interstate jurisdictions pursuant to Part 36 of the Commission's Rules. Column (b) less columns (c), (d) and (e). This amount also equals the total of columns (g) and (h) except for those rows where an N/A appears in column (g).

g. State - This column reflects that portion of each row that is allocated to the state jurisdiction for which this schedule is being filed, pursuant to Part 36 of the Commission's Rules. The cost of detariffed CPE shall be entered in this column pursuant to Part 36.142.

h. Interstate - This column reflects that portion of each row that is allocated to the interstate jurisdiction for which this schedule is being filed, pursuant to Part 36 of the Commission's Rules.

Common Line - These columns reflect those amounts that are assigned to the common line access element pursuant to Part 69 of the Commission's Rules. These costs are recovered through Subscriber Line Charges and a carrier common line charge assessed upon all interexchange carriers who use local exchange common line facilities for the provision of interstate or foreign telecommunications services.

i. Pay - This column reflects that portion of each row applicable to Pay Telephone Common Line Access charges pursuant to Part 69 of the Commission's Rules.

j. Inside Wire - This column reflects that portion of each row applicable to Common Line Access charges associated with inside wire pursuant to Part 69 of the Commission's Rules.

k. Base Factor Portion (BFP) - This column reflects that portion of Common Line Access charges not assigned to Pay, Inside Wire or CPE pursuant to Part 69 of the Commission's Rules

m. Total Common Line - The total of columns (i) through (k), unless the row item is not apportioned among the common line subelements because of the aggregate carrier common line charge. In these instances, total common line will be the only field populated for common line and will not, therefore, equal the total of columns (i) through (k).

Traffic Sensitive - Traffic Sensitive plant is engineered to handle anticipated volumes of calls. These columns reflect those amounts that are assigned to the Traffic Sensitive Access elements and subelements pursuant to Part 69 of the Commission's Rules.

n. Switching - This column reflects that portion of each row associated with connection of toll lines to toll lines, or toll lines to local central offices, exclusive of equal access costs if the exchange carrier has a separate equal access rate element. The amounts entered in this column are applicable to the Local Switching Access element pursuant to Part 69 of the Commission's Rules.

o. Equal Access - This column includes only initial incremental expenditures for hardware and other equipment, and initial incremental presubscription costs related to the provision of equal access which would not be required absent the provision of equal access. This column applies to only those carriers having a separate equal access rate element.

p. Transport - This column reflects that portion of each line item applicable to charges assessed upon all interexchange carriers who use switching or transport facilities that are apportioned to the transport element or elements for purposes of apportioning net investment. The amounts entered in this column are assigned to the Transport Access element pursuant to Part 69 of the Commission's Rules.

q. Information - This column reflects that portion of each row applicable to charges assessed upon all interexchange carriers who are connected to assistance boards through interexchange directory assistance trunks. The amounts entered in this column are assigned to the Information Access element pursuant to Part 69 of the Commission's Rules.

r. Total Traffic Sensitive - The total of columns (n) through (q).

s. Special Access - This column reflects that portion of each row applicable to the total of all sub-elements that have been established for the use of equipment or facilities assigned to the Special Access element for purposes of apportioning net investment. The amounts entered in this column are assigned to the Special Access element pursuant to Part 69 of the Commission's Rules.

t. Total Access - The total of columns (m), (r) and (s).

u. Billing and Collection - This column reflects that portion of each row applicable to Billing and Collection services pursuant to Part 69 of the Commission's Rules.

v. Interexchange (IX) - This column reflects that portion of each row applicable to Interexchange services pursuant to Part 69 of the Commission's Rules.

TABLE II - DEMAND ANALYSIS TABLE

DEFINITIONS

Originating minutes of use (MOU) is a measurement of traffic on originating MTS and MTS-like common lines.

Terminating MOU is a measurement of traffic on terminating MTS and MTS-like, originating 800, terminating outWATS, originating open-end-FX and terminating open-end-FX common lines.

Premium carrier common line (CCL) MOU is a measurement of Feature Group A (FGA) and Feature Group B (FGB) traffic originating from or terminating at offices converted to equal access, plus all Feature Group C (FGC), Feature Group D (FGD), and interstate/intraLATA MOU, excluding closed-end WATS and WATS type MOU.

Non-Premium CCL MOU is a measurement of FGA and FGB access MOU originating and/or terminating at offices not converted to equal access.

Rows 2010 through 2060 of this table should contain monthly details of quarterly data. Rows 2090 through 2150 should be reported as of the end of the quarter.

MONTHLY DATA - END OF QUARTER VIEW

Row	DESCRIPTION
2010.	Originating Premium CCL MOU are calculated by dividing the originating premium CCL revenue reported to the pool by the originating premium CCL rate, calculated pursuant to Section 69.105.
2020.	Terminating Premium CCL MOU are calculated by dividing the terminating premium CCL revenue by the terminating premium CCL rate, calculated pursuant to Section 69.105.
2030.	Originating Non-Premium CCL MOU are calculated by dividing the originating Non-Premium CCL revenues reported to the pool by the product of the originating premium rate and .45, pursuant to Section 69.113.
2040.	Terminating Non-Premium CCL MOU are calculated by dividing the terminating Non-Premium CCL revenues by the product of the terminating premium CCL rate and .45, calculated pursuant to Section 69.113.
2050.	Total premium traffic sensitive MOU are calculated using premium local switching revenues and the appropriate rates.

2060. Total Non-Premium traffic sensitive MOU are calculated using non-premium local switching revenues and the appropriate rates.

QUARTERLY DATA

2090. Single line business customer premises terminations (CPTs) subject to the single line business interstate subscriber line charge, excluding company official, mobile radiotelephone and public telephone. CPTs are commonly referred to as "main station equivalents" or "billable units". A CPT is a line termination at the customer premises, rather than at the central office. Enter end of quarter in service amounts.

2100. Residence lifeline CPTs for which the interstate subscriber line charge is reduced or waived. The decision to implement a lifeline plan is left to the individual state commission. Enter end of quarter in service amounts.

2110. Residence non-lifeline CPTs subject to the residence interstate subscriber line charge, excluding lifeline CPTs. Enter end of quarter in service amounts.

2120. The total of multiline business CPTs subject to the multiline business interstate subscriber line charge including multiline semi-public lines, PBX trunks, Centrex CU trunks, hotel/motel LD trunks and Centrex CO lines ordered after July 27, 1983 and Centrex CO and CTX CO-like lines in service or ordered as of July 27, 1983. Enter end of quarter in service amounts for all of these items.

2140. Special access lines subject to a $25 surcharge, including WATS lines, as appropriate, after June 1, 1986. Enter end of quarter in service amounts.

2150. Total billable access lines is the sum of rows 2090 through 2140.

TABLE III - RESTATED DATA TABLE

GENERAL INSTRUCTIONS

Table III requires current quarter data, enforcement period to date data, and cumulative previous enforcement period data for 16 key elements for each of the following categories: Subject to Separations, Interstate Access, Common Line, Traffic Sensitive, and Special Access.

Amounts reported for the current quarter and for the enforcement period to date shall include all adjustments necessary to reflect the proper ratemaking amounts for the applicable reporting period. Amounts reported for the previous enforcement period shall reflect the cumulative amounts for that period including all necessary adjustments applicable to the previous period, through the end of the quarter covered by this report.

Data entered in the current quarter columns include only revenues earned and costs incurred during the reporting period. Amounts reported in these columns shall agree with amounts in Table I for the first quarter of each year and with corresponding amounts reported in the current quarter column of the FCC Form 492. Amounts reported in the enforcement period to date columns shall correspond to amounts reported in the cumulative columns of the FCC Form 492. Previous enforcement period columns shall report cumulative data for the immediately preceding enforcement period including all adjustments to that enforcement period's data.

ROW INSTRUCTIONS

3010. Net Revenues - Net revenues, as described in Table I, row 1090; or FCC Form 492, row 1.

3020. Total Operating Expenses - Enter operating expenses, as described in Table I, row 1190 in this row.

3030. Other Operating Income/Loss - Enter other operating income or losses, as described in Table I, row 1290, in this row.

3040. Total Non-Operating Items - Enter non-operating items, as described in Table I, row 1390, in this row.

3050. Total Other Taxes - Enter other taxes, as described in Table I, row 1490, in this row.

3060. Total Federal Income Taxes - Enter federal income taxes, as described in Table I, row 1590, in this row.

All investment data must be calculated by one of two methods: (1) divide the sum of average monthly investments by the number of months in the reporting period; (2) divide the sum of the investment balance for the end of the previous period and the end of month investment balances for each month in the current reporting period by the number of months in the reporting period plus one.

3070. Total Plant-in-Service - Enter plant-in-service, as described in Table I, row 1690, in this row.

3080. Total Other Investments - Enter all other investments, as described in Table I, row 1790, in this row.

3090. Total Reserves - Enter total reserves, as described in Table I, row 1890, in this row.

4000. Average Net Investment - Enter the total of rows 3070 and 3080 less row 3090. Average Net Investment is described in Table I for row 1910; and in FCC Form 492, row 4.

4010. Net Return - Enter the total of rows 3010 and 3030 less 3020, 3040, 3050 and 3060. Net Return is described in Table I, row 1915; and In FCC Form 492, row 3.

4020. Rate of Return - Calculate by dividing row 4010 by row 4000 and annualizing with the appropriate multiplicative factor as reported on row 5010.

4030. FCC Ordered Refund - This amount shall be developed in accordance with CC Docket 84-800, Phase I. FCC Ordered Refund is described in Table I, row 1925; and in FCC Form 492, row 6.

4040. Refund Adjusted for Taxes - To calculate this amount multiply row 4030 by the tax rate (see row 5000) and subtract the result from row 4030. Refund Adjusted for Taxes is described in Table I, row 1926; and in FCC Form 492, Line 6 instructions, row 4.

4050. Net Return Including FCC Refund - The total of rows 4010 and 4040. Net Return Including FCC Refund is described in Table I, row 1930; and in FCC Form 492, row 7.

4060. Rate of Return Including Refund - Row 4050 divided by row 4000 annualized with a multiplicative factor appropriate for the enforcement period. Rate of Return Including Refund is described in Table I, row 1935; and in FCC Form 492, row 8.

5000. Tax Rate - Enter the tax rate applicable to row 4040. - The tax rate is calculated in FCC Form 492, Line 6 instructions, row 3.

5010. ROR Multiplicative Factor - Enter the multiplicative factor used for annualizing rate of return for the enforcement period to date. The following factors shall be used for the appropriate period:

Current Quarter	4.0000
Prior Enforcement Period	0.5000
Enforcement Period To Date:	
First Quarter	4.0000
Second Quarter	2.0000
Third Quarter	1.3333
Fourth Quarter	1.0000
Fifth Quarter	0.8000
Sixth Quarter	0.6667
Seventh Quarter	0.5714
Eighth Quarter	0.5000

COLUMN INSTRUCTIONS

Columns (b), (e), (h), (k) and (n) reflect the amounts assigned to: subject to separations, interstate access, common line, traffic sensitive and special access for the current reporting period.

Columns (c), (f), (i), (l) and (o) reflect the cumulative amounts assigned to: subject to separations, interstate access, common line, traffic sensitive and special access for the current enforcement period.

Columns (d), (g), (j), (m) and (p) reflect the cumulative amounts assigned to: subject to separations, interstate access, common line, traffic sensitive and special access for the prior enforcement period.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

A. Introduction

This document contains the detailed automated data processing (ADP) specifications for the automated report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Format and Media

1. All data should be submitted on 5.25-inch double-sided double-density IBM-PC compatible diskettes.

2. All files should be coded in ASCII.

3. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

4. The file name for each file has seven components:

   a. the four letter COSA code (CO = Company, SA = Study Area, see attached COSA Code Table for a list of companies and their respective COSAs).
   b. the last two digits of the year which is covered by the data.
   c. the letter "Q".
   d. the number of the quarter which is covered by the data.
   e. a decimal point.
   f. the letter "P", "C", or "U" to indicate whether this is the Public version, the Confidential version, or the only (Unrestricted) version since all data is non-confidential.
   g. two digits (zero filled) for the submission number. Submission 0 is for test data purposes only. Submission 1 is for the first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission.

   For example, the file name for the Unrestricted Version of the initial quarterly report data file to be submitted by Illinois Bell to cover the first quarter of calendar year 1990, would be LBIL90Q1.U01:

LBIL	COSA for Illinois Bell
90	Data for calendar year 1990
Q	Quarterly Report data file
1	Data for the first quarter
.	decimal point
U	Unrestricted version
01	First submission of this quarter's data

5. A separate file should be prepared for each report. More than one file can be placed on the same diskette, as long as they cover the same period, version, and submission number.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g. use -4, NOT - 4 or (4).

2. Begin each data record in column 1 and make each record the proper length as specified in the accompanying record layouts. Commas are used as delimiters between fields. All numeric fields are right justified and space filled, e.g. use ____123, NOT 123____. All non-numeric fields are enclosed in double quotation marks and are left justified and space filled within these quotation marks, e.g. use "John Doe ____".

3. Give each record a unique record number, beginning with 1001 and incrementing by one, with no numbers skipped.

4. Do NOT include "$" or "%" or embedded commas or decimal points in any numeric data fields, except for rate of return data fields (Rate of Return and Rate of Return including Refund), which will include a decimal point but not a percent sign.

5. In any numeric data field designated by N/A, enter -99999. If a "Public Version" diskette is filed, enter -88888 in any numeric data field for which data is "Withheld". **DO NOT** override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier should enter as a footnote to the field, the amount(s) and an explanation. The amount(s) must not be entered in the N/A's field. All other fields must be populated. If there are no data applicable to an open field, enter zero. These entries should be formatted according to the format rules for the particular data field; e.g., in the Rate of Return field, -99999 would be entered as -99999.00.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return and other percentage amounts (Rate of Return, Rate of Return including Refund and Tax Rate) must be entered in percent and must be rounded to 2 decimal places.

   Example: 12 2/3 percent should be entered as 12.67

5. The Rate of Return Multiplicative Factor must be rounded to four decimal places.

   Example: 4.0000, or 1.3333, or .6667

E. Data Record Descriptions

The eleven data record types are described below. See pages 6 through 22 for record layouts. The file will consist of one Type H1 record, followed by one Type L1 record, followed by 72 Type R3 records, followed by six Type M1 records, followed by six Type Q2 records, followed by 16 Type N1 records, followed by 2 Type W1 records, followed by one or more Type C2 records, followed by zero or more Type F1 records, followed by zero or more Type E2 records, followed by one Type T1 record.

Record Type H1	Header Record	One Type H1 record per file. The first record of each file. Contains identifying data. See page 6 for record layout.
Record Type L1	Label Record	One Type L1 record per file. The second record of each file. Contains report number, carrier name, study area name, etc. See page 7 for record layout.
Record Type R3	Revenue Requirement Data Record	72 Type R3 records per file. One record for each of the 72 rows shown on Pages 3, 4 & 9 - 15 of the accompanying Report Definition. Each record contains data values for that particular revenue or revenue requirement element broken out by the cost categories and access elements shown on Pages 3, 4 & 16 - 18 of the Report Definition. See pages 8 - 10 for record layout.
Record Type M1	Demand Analysis Monthly Data Record	Six Type M1 records per file. One record for each of the 6 rows of monthly demand analysis data (end of quarter view) shown on Pages 5 & 19 - 20 of the accompanying Report Definition. Each record contains monthly details of minutes of use data. See page 11 for record layout.

Record Type Q2	Demand Analysis Quarterly Data Record	Six Type Q2 records per file. One record for each of the 6 rows of quarterly demand analysis data shown on Pages 5 and 20 of the accompanying Report Definition. Each record contains quarterly minutes of use data and access line data. See page 12 for record layout.
Record Type N1	Restated Data Record	16 Type N1 records per file. One record for each of the 16 rows of restated data shown on pages 6 - 8 and 21 - 23 of the accompanying Report Definition. Each record contains current quarter data, enforcement period to date data and cumulative previous enforcement period data. See pages 13 & 14 for record layout.
Record Type W1	Restated Related Data Record	Two Type W1 records per file. One record for each of the 2 rows of data relating to the restated data as shown on pages 8 and 23 of the accompanying Report Definition. Each record contains a tax rate for refund adjusted for taxes or a mutiplicative factor used for annalizing rate of return. See page 15 for record layout.
Record Type C2	Confidential Treatment Record	One or more Type C2 records per file. Contains information to identify the data for which the carrier is seeking confidential treatment or to verify that the carrier is not seeking any confidential treatment. See pages 16 & 17 for record layout.

Record Type F1	Footnote Record	Optional. Zero or more Type F1 records per file. Contains explanatory footnote text. See page 18 & 19 for record layout.
Record Type E2	Erratum Record	Zero Type E2 records in the first submission of a quarter's data. One or more Type E2 records per file in revisions filed to correct that quarter's submission. Contains information to identify the data which was corrected in this submission. See pages 20 & 21 for record layout.
Record Type T1	Trailer Record	One Type T1 record per file. The last record of each file. Contains contact person, etc. See page 22 for record layout.

RECORD TYPE H1 - HEADER RECORD

Field	Item	Example	Position	Description
1	Record Number	1001	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. (see attached COSA Code Table) Format: include quotation marks.
3	Record Type	"H1"	13-16	Always contains the letter H capitalized and the number 1 with no space between them. Format: include quotation marks.
4	File Name	"LBIL90Q1.U01"	18-31	The name of the ASCII file. Format: see page 1, paragraph B.4 above. include quotation marks.
5	Year	1990	33-36	The year covered by the data.
6	Quarter #	1	38	The quarter number covered by the data. 1 for January to March 2 for April to June 3 for July to September 4 for October to December
7	Data Entry Date	19900615	40-47	The date on which the data was last entered or revised. Format: YYYYMMDD.
8	Version	"U"	49-51	The version letter (P, C or U) capitalized (for Public, Confidential or Unrestricted) Format: include quotation marks.
9	Submission #	1	53-54	0 for test data purposes only. 1 for first submission of a quarter's data. Higher numbers (2, 3, etc.) would be used if needed for successive revisions to correct that quarter's submission. Format: right justified and space filled.
10	End of Record Code	"XQ"	56-59	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas.
The ruler lines (123456789 etc.) included below and following with sample records are included only to assist the reader. Do not include ruler lines as records in the electronic filing.

```
         1         2         3         4         5         . . . . .    Ruler line
12345678901234567890123456789012345678901234567890123456789012345678  . . . . .    Ruler line
```

Sample record:

```
1001,"LBIL","H1","LBIL90Q1.U01",1990,1,19900615,"U", 1,"XQ"
```

RECORD TYPE L1 - LABEL RECORD

Field	Item	Example	Position	Description
1	Record Number	1002	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"L1"	13-16	Always contains the letter L capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Report Number	"FCC REPORT 43-01"	18-35	Always contains "FCC REPORT 43-01" capitalized. Format: include quotation marks.
5	Carrier	"Illinois Bell " (spaces until pos. 68)	37-68	Name of the carrier. Format: left justified and space filled. include quotation marks.
6	Study Area	"Illinois "	70-91	Name of the study area. Format: left justified and space filled. include quotation marks.
7	Period Covered	"Jan 1990 to Mar 1990"	93-114	Period covered by the data. Format: "mmm yyyy to mmm yyyy" include quotation marks.
8	End of Record Code	"XQ"	116-119	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9         0         1
123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678
Sample record:
1002,"LBIL","L1","FCC REPORT 43-01","Illinois Bell                ","Illinois          ","Jan 1990 to Mar 1990","XQ"
```

RECORD TYPE R3 - REVENUE REQUIREMENT DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1009	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"R3"	13-16	Always contains the letter R capitalized and the number 3 with no space between them. Format: include quotation marks.
4	Row Number	1090	18-21	Valid range: 1010 to 1980 Format: right justified and space filled.
5	Column (b) data	81728 -OR- 12.00	23-31	This field contains the data corresponding to column (b) as shown on Pages 3, 4 and 16 thru 18 of the accompanying Report Definition. DO NOT override designated N/As. Format: right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows where a field is designated by N/A. All other fields must be populated. If there is no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	5432	33-41	Column (c) data Format: see Field 5 above.
7	Column (d) data	2716	43-51	Column (d) data Format: see Field 5 above.
8	Column (e) data	2716	53-61	Column (e) data Format: see Field 5 above.
9	Column (f) data	70864	63-71	Column (f) data Format: see Field 5 above.
10	Column (g) data	5432	73-81	Column (g) data Format: see Field 5 above.
11	Column (h) data	65432	83-91	Column (h) data Format: see Field 5 above.
12	Column (i) data	-99999	93-101	Column (i) data Format: see Field 5 above.

RECORD TYPE R3 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
13	Column (j) data	-99999	103-111	Column (j) data Format: see Field 5 above.
14	Column (k) data	-99999	113-121	Column (k) data Format: see Field 5 above.
15	Column (m) data	5432	123-131	Column (m) data Format: see Field 5 above.
16	Column (n) data	2716	133-141	Column (n) data Format: see Field 5 above.
17	Column (o) data	2716	143-151	Column (o) data Format: see Field 5 above.
18	Column (p) data	5432	153-161	Column (p) data Format: see Field 5 above.
19	Column (q) data	5432	163-171	Column (q) data Format: see Field 5 above.
20	Column (r) data	16296	173-181	Column (r) data Format: see Field 5 above.
21	Column (s) data	5432	183-191	Column (s) data Format: see Field 5 above.
22	Column (t) data	27160	193-201	Column (t) data Format: see Field 5 above.
23	Column (u) data	19136	203-211	Column (u) data Format: see Field 5 above.
24	Column (v) data	19136	213-221	Column (v) data Format: see Field 5 above.

RECORD TYPE R3 - REVENUE REQUIREMENT DATA RECORD (continued)

Field	Item	Example	Position	Description
25	End of Record Code	"XQ"	223-226	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type R3, M1, Q2, N1, W1 and C2 records) containing footnote text to explain the specific circumstances.

```
         1         2         3         4         5         6         7         8         9
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Sample record:
1009,"LBIL","R3",1090,    81728,     5432,     2716,     2716,    70864,     5432,    65432,
```

```
         1         1         1         1         1         1         1         1         1
9        0         1         2         3         4         5         6         7         8
3456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234
Continuation of sample record:
   -99999,   -99999,   -99999,     5432,     2716,     2716,     5432,     5432,    16296,
```

```
1        1         2         2         2
8        9         0         1         2
345678901234567890123456789012345678901234567890123456
Continuation of sample record:
     5432,    27160,    19136,    19136,"XQ"
```

RECORD TYPE M1 - DEMAND ANALYSIS MONTHLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1075	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"M1"	13-16	Always contains the letter M capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	2010	18-21	Valid range: 2010 to 2060 Format: right justified and space filled.
5	Data for the first month of the quarter	5432	23-31	This field contains the data corresponding to the first month of the quarter. Format: right justified and space filled. All fields must be populated. If there is no data applicable to a field enter zero. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	Data for the second month of the quarter	5654	33-41	This field contains the data corresponding to the second month of the quarter. Format: see Field 5 above.
7	Data for the third month of the quarter	5876	43-51	This field contains the data corresponding to the third month of the quarter. Format: see Field 5 above.
8	End of Record Code	"XQ"	53-56	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type M1, Q2, N1, W1 and C2 records) containing footnote text to explain the specific circumstances.

```
          1         2         3         4         5
12345678901234567890123456789012345678901234567890123456
Sample record:
1075,"LBIL","M1",2010,     5432,     5654,     5876,"XQ"
```

RECORD TYPE Q2 - DEMAND ANALYSIS QUARTERLY DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1081	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"Q2"	13-16	Always contains the letter Q capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Row Number	2090	18-21	Valid range: 2090 to 2150. Format: right justified and space filled.
5	Quarterly data	5432	23-31	This field contains the data corresponding to the entire quarter. Format: right justified and space filled. All fields must be populated. If there is no data applicable to a field enter zero. Enter -88888 on the "public version" diskette to indicate that confidential treatment has been requested.
6	End of Record Code	"XQ"	33-36	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type Q2, N1, W1 and C2 records) containing footnote text to explain the specific circumstances.

```
         1         2         3
12345678901234567890123456789012345
Sample record:
1081,"LBIL","Q2",2090,     5432,"XQ"
```

RECORD TYPE N1 - RESTATED DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1087	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"N1"	13-16	Always contains the letter N capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	3010	18-21	Valid range: 3010 to 4060 Format: right justified and space filled.
5	Column (b) data	70864 -OR- 12.00	23-31	This field contains the data corresponding to column (b) as shown on Page 23 of the accompanying Report Definition. DO NOT override designated N/As. Format: right justified and space filled. Enter -99999 in integer rows and -99999.00 in percentage rows where a field is designated by N/A. All other fields must be populated. If there is no data applicable to an open field enter zero. Enter -88888 in integer rows and -88888.00 in percentage rows on the "public version" diskette to indicate that confidential treatment has been requested.
6	Column (c) data	70864	33-41	Column (c) data Format: see Field 5 above.
7	Column (d) data	212592	43-51	Column (d) data Format: see Field 5 above.
8	Column (e) data	65432	53-61	Column (e) data Format: see Field 5 above.
9	Column (f) data	65432	63-71	Column (f) data Format: see Field 5 above.
10	Column (g) data	196296	73-81	Column (g) data Format: see Field 5 above.
11	Column (h) data	5432	83-91	Column (h) data Format: see Field 5 above.
12	Column (i) data	5432	93-101	Column (i) data Format: see Field 5 above.

RECORD TYPE N1 - RESTATED DATA RECORD (continued)

Field	Item	Example	Position	Description
13	Column (j) data	16296	103-111	Column (j) data Format: see Field 5 above.
14	Column (k) data	16296	113-121	Column (k) data Format: see Field 5 above.
15	Column (l) data	16296	123-131	Column (l) data Format: see Field 5 above.
16	Column (m) data	48888	133-141	Column (m) data Format: see Field 5 above.
17	Column (n) data	5432	143-151	Column (n) data Format: see Field 5 above.
18	Column (o) data	5432	153-161	Column (o) data Format: see Field 5 above.
19	Column (p) data	16296	163-171	Column (p) data Format: see Field 5 above.
20	End of Record Code	"XQ"	173-176	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type N1, W1 and C2 records) containing footnote text to explain the specific circumstances.

```
        1         2         3         4         5         6         7         8         9         10
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789012
Sample record:
1087,"LBIL","N1",3010,   70864,   70864,  212592,   65432,   65432,  196296,    5432,    5432,
```

```
        1         1         1         1         1         1         1
        1         2         3         4         5         6         7
3456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456
          Continuation of sample record:

  16296,   16296,   16296,   48888,    5432,    5432,   16296,"XQ"
```

RECORD TYPE N1 - RESTATED RELATED DATA RECORD

Field	Item	Example	Position	Description
1	Record Number	1103	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"W1"	13-16	Always contains the letter W capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Row Number	5000	18-21	Valid range: 5000 to 5010 Format: right justified and space filled.
5	Column (q) data	50.00 -OR- 4.00 -OR- 0.6667	23-33	This field contains the data corresponding to column (q) as shown on Pages 8 and 23 of the accompanying Report Definition. Format: right justified and space filled. All fields must be populated. If there is no data applicable to a field enter zero.
6	End of Record Code	"XQ"	35-38	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Footnote records are needed if any data for the current period differs materially from that for the previous period or the corresponding period of the preceding year and the difference is not self-explanatory but was caused by unusual circumstances that have not been explained in a previous report, or if the carrier does not follow the procedures described in the row/column instructions in the accompanying Report Definition, or if there are significant out-of-period adjustments. Add one or more Type F1 records (after the remaining Type W1 and C2 records) containing footnote text to explain the specific circumstances.

```
        1         2         3
12345678901234567890123456789012345678
Sample records:
1103,"LBIL","W1",5000,      50.00,"XQ"
1104,"LBIL","WI",5010,     4.0000,"XQ"
                -OR-
1103,"LBIL","WI",5000,      50.00,"XQ"
1104,"LBIL","WI",5010,     0.6667,"XQ"
```

RECORD TYPE C2 - CONFIDENTIAL TREATMENT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1105	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"C2"	13-16	Always contains the letter C capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the confidential data)	1006	18-21	This field contains the record number of the record which contains the data for which the carrier is seeking confidential treatment. If the request is for the entire column(s), an entire table, or the entire submission, use 9999. If no confidential treatment is being requested, then use 0. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the confidential data appears. If the request is for the entire submission, enter "ZZZZ". If no confidential treatment is being requested, then enter " ". Format: include quotation marks. left justified and space filled.
6	Row Number	1040	30-33	This field contains the row number of the row which contains the confidential data as identified in the accompanying Report Definition. If the request is for the entire column(s), an entire table, or the entire submission, enter 9999. If no confidential treatment is being requested then use 0. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the confidential data as identified in the accompanying Report Definition. If the request is for an entire row, an entire table, or the entire submission, enter "ZZ". If the request is for more than one column but less than the entire row, then populate this field and as many as needed of fields 8 thru 26. If no confidential treatment is being requested, then enter " " in all of fields 7 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE C2 - CONFIDENTIAL TREATMENT RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"G "	40-43	.....
9	Third Column Label	"Q "	45-48	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the request is for
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	"V "	130-133	..... Otherwise, enter " ".
27	End of Record Code	"XQ"	135-138	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9
123456789012345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1105,"LBIL","C2",1006,"I   ",1040,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1106,"LBIL","C2",1009,"I   ",1090,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1107,"LBIL","C2",9999,"I   ",9999,"U ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1108,"LBIL","C2",1076,"II  ",2010,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1109,"LBIL","C2",1087,"III ",3010,"D ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
                                                    - OR -

1105,"LBIL","C2",   0,"    ",   0,"  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
1         1         1         1
0         1         2         3
01234567890123456789012345678901234567890123456789012345678
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
"  ","  ","  ","  ","  ","  ","  ","  ","XQ"

                - OR -

"  ","  ","  ","  ","  ","  ","  ","  ","XQ"
```

RECORD TYPE F1 - FOOTNOTE TEXT RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1110	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"F1"	13-16	Always contains the letter F capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Record Number (for the footnoted data)	1006	18-21	This field contains the record number of the record which contains the footnoted data. If the footnote pertains to an entire column, an entire table, or the entire submission, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the footnoted data appears. If the footnote pertains to an entire table or the entire submission, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1040	30-33	This field contains the row number of the row which contains the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire column, an entire table, or the entire submission, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the footnoted data as identified in the accompanying Report Definition. If the footnote pertains to an entire row, an entire table, or the entire submission, enter "ZZ". Format: include quotation marks. left justified and space filled.

RECORD TYPE F1 - FOOTNOTE TEXT RECORD (continued)

Field	Item	Example	Position	Description
8	Footnote Number	1	40-41	The number of this particular footnote. Valid range: 1 to 99. Format: right justified and space filled.
9	Sequence Number	1	43-44	The sequence number of the record within the footnote. In other words, the order of the specific record in the sequence of records which, when combined, will provide the entire footnote. Valid range: 1 to 99. Format: right justified and space filled.
10	Footnote Text	"Footnote text * (spaces until pos. 102)	46-102	The text of the footnote or of the continuation line. Format: include quotation marks at the beginning and end of this field and left justify within these quotation marks.
11	End of Record Code	"XQ"	104-107	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
                                                                                                    1
         1         2         3         4         5         6         7         8         9         0
1234567890123456789012345678901234567890123456789012345678901234567890123456789012345678901234567
Sample records:
1110,"LBIL","F1",1006,"I   ",1040,"C ", 1, 1,"Footnote text for footnote 1                          ","XQ"
1111,"LBIL","F1",1006,"I   ",1040,"C ", 1, 2,"continuation text for footnote 1                      ","XQ"
1112,"LBIL","F1",1006,"I   ",1040,"C ", 1, 3,"last line of footnote 1                               ","XQ"
1113,"LBIL","F1",1028,"I   ",1410,"ZZ", 2, 1,"Footnote 2 pertains to all columns of Table I row 1410","XQ"
1114,"LBIL","F1",9999,"I   ",9999,"G ", 3, 1,"Footnote 3 pertains to all rows of Table I column G    ","XQ"
1115,"LBIL","F1",1075,"II  ",2010,"B ", 4, 1,"Footnote 4 pertains to Table II row 2010 column B      ","XQ"
1116,"LBIL","F1",1087,"III ",3010,"D ", 5, 1,"Footnote 5 pertains to Table III row 3010 column D     ","XQ"
```

RECORD TYPE E2 - ERRATUM RECORD

Field	Item	Example	Position	Description
1	Record Number (for this record)	1117	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"E2"	13-16	Always contains the letter E capitalized and the number 2 with no space between them. Format: include quotation marks.
4	Record Number (for the corrected data)	1006	18-21	This field contains the record number of the record which contains the data which was corrected in this submission. If the entire column(s), an entire table, or the entire submission was corrected, use 9999. Format: right justified and space filled.
5	Table Number	"I "	23-28	This field contains the table number (Roman numerals) of the table in which the corrected data appears. If the entire submission was corrected, use "ZZZZ". Format: include quotation marks. left justified and space filled.
6	Row Number	1040	30-33	This field contains the row number of the of the row which contains the corrected data as identified in the accompanying Report Definition. If the entire column(s), an entire table, or the entire submission was corrected, enter 9999. Format: right justified and space filled.
7	Column Label	"C "	35-38	This field contains the column letter of the corrected data as identified in the accompanying Report Definition. If an entire row, an entire table, or the entire submission was corrected, enter "ZZ". If more than one column but less than the entire row was corrected, then populate this field and as many as needed of fields 8 thru 26. Format: include quotation marks. left justified and space filled.

RECORD TYPE E2 - ERRATUM RECORD (continued)

Field	Item	Example	Position	Description
8	Second Column Label	"E "	40-43	.....
9	Third Column Label	"G "	45-48	. Fields 8 thru 26 are similar
.				. to Field 7 and are used
.				. when the correction is in
.				. the same row and more than
.				. one column.
26	Twentieth Col. Label	"V "	130-133	..... Otherwise, enter " ".
27	Footnote Number	1	135-136	This field contains the footnote number that explains the correction. If there is no footnote, use a zero. Format: right justified and space filled.
28	End of Record Code	"XQ"	138-141	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

```
        1         2         3         4         5         6         7         8         9
12345678901234567890123456789012345678901234567890123456789012345678901234567890123456789
Sample records:
1117,"LBIL","E2",1006,"I   ",1040,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1118,"LBIL","E2",1009,"I   ",1090,"C ","G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1119,"LBIL","E2",1028,"I   ",1410,"ZZ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1120,"LBIL","E2",9999,"I   ",9999,"G ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1121,"LBIL","E2",1075,"II  ",2010,"B ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
1122,"LBIL","E2",9999,"III ",9999,"D ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ","  ",
```

```
1         1         1         1         1
0         1         2         3         4
01234567890123456789012345678901234567890123
Continuation of sample records:
"  ","  ","  ","  ","  ","  ","  ", 1,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 0,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 2,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 3,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 4,"XQ"
"  ","  ","  ","  ","  ","  ","  ", 5,"XQ"
```

RECORD TYPE T1 - TRAILER RECORD

Field	Item	Example	Position	Description
1	Record Number	1123	1-4	The sequential number of this record within this data file plus 1000. Format: right justified and space filled.
2	COSA	"LBIL"	6-11	The COSA code for the filing entity. Format: include quotation marks.
3	Record Type	"T1"	13-16	Always contains the letter T capitalized and the number 1 with no space between them. Format: include quotation marks.
4	Contact Person	"John Doe " (spaces until pos. 59)	18-59	The name of the person to contact if there are questions about the report. Format: include quotation marks.
5	Telephone #	"(202) 555-1212 x123 "	61-82	The Contact Person's telephone number. Format: include quotation marks.
6	End of Record Code	"XQ"	84-87	Always contains the letters XQ capitalized with no space between them to indicate the end of the record. Format: include quotation marks.

Note: All fields are separated by commas

Sample record:

```
        1         2         3         4         5         6         7         8
12345678901234567890123456789012345678901234567890123456789012345678901234567

1123,"LBIL","T1","John Doe                                    ","(202) 555-1212 x123 ","XQ"
```

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy CONF. TREATMENT TABLE
COSA: xxxx PAGE 1 OF x

CONFIDENTIAL TREATMENT TABLE

Table	Row	Column(s)
(a)	(b)	(c)
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x ... Ruler Line

sample entries:

I	1040	C, G
I	1090	C, G
I	ALL	U
II	2010	ALL
III	3010	D

THE COMPANY HAS REQUESTED CONFIDENTIAL TREATMENT FOR THE ABOVE DATA
IN THIS REPORT.

-OR-

THE COMPANY HAS NOT REQUESTED CONFIDENTIAL TREATMENT FOR ANY DATA
IN THIS REPORT.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy FOOTNOTE TABLE
COSA: xxxx PAGE 1 OF x

FOOTNOTE TABLE

Table	Row	Col	FN#	Footnote
(a)	(b)	(c)	(d)	(e)
xxxx	1234	xxx	12	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx ... Ruler Line
sample entries:				
I	1040	C	1	Footnote text for footnote 1 continuation text for footnote 1 last line of footnote 1 =
I	1410	ALL	2	Footnote 2 pertains to all columns of Table I row 1410
I	ALL	G	3	Footnote 3 pertains to all rows of Table I column G
II	2010	B	4	Footnote 4 pertains to Table II row 2010 column B
III	3010	D	5	Footnote 5 pertains to Table III row 3010 column D

-OR-

THERE ARE NO FOOTNOTES FOR THIS SUBMISSION.

FCC REPORT 43-01
ARMIS QUARTERLY REPORT

Approved by OMB
3060-0395
Expires 10/31/90

COMPANY: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx VERSION
STUDY AREA: xxxxxxxxxxxxxxxxxx SUBMISSION x
PERIOD: From mmm yyyy to mmm yyyy ERRATUM TABLE -
COSA: xxxx PAGE 1 OF x -

ERRATUM TABLE

Table	Row	Column(s)	Footnote	
(a)	(b)	(c)	(d)	
xxxx	1234	x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x, x	12	... Ruler Line
sample entries:				
I	1040	C, G	1	
I	1090	C, G		
I	1410	ALL	2	
I	ALL	G	3	
II	2010	B	4	
III	ALL	D	5	

THE ABOVE DATA HAS BEEN CORRECTED IN THIS SUBMISSION.
SEE THE FOOTNOTE TABLE FOR FOOTNOTES WHERE APPLICABLE.

A. Introduction

This document contains the detailed specifications for the paper report to be filed as FCC Report 43-01, the ARMIS Quarterly Report.

B. General Instructions

1. See sections B and C on pages 1 and 2 of the accompanying Reporting Procedures for a discussion of the Confidential Version, the Public Version, and the Unrestricted Version of this report and for a definition and discussion of data items that are "Not Available" or are "Withheld."

2. The Ruler Lines included on the Confidential Treatment, Footnote and Erratum Tables are included only to assist the reader. Do not include ruler lines as lines in the report.

3. The paper report must be printed on 8 1/2 inch by 11 inch paper. For ease of preparation, an original may be produced on larger paper and reduced to this size for submission. Copies filed must be legible and permanent, in black ink. The report may be printed in portrait mode (8 1/2 inches across the top of the page) or landscape mode (11 inches across the top of the page). In portrait mode, the printing should not be smaller than 17 character per inch and 8 lines per inch; in landscape mode, the printing should not be smaller than 15 characters per inch and 10 lines per inch.

C. Data Entry Conventions

1. If an entry is to be a subtraction, indicate so by placing a minus sign in the column immediately preceding the numeric data, e.g., use -4, NOT - 4 or (4).

2. Items that need not be reported because they do not apply are designated by N/A. If a "Public Version" report is filed, enter W/H in any numeric data field for which data is "Withheld". **DO NOT** override N/As. If a reporting carrier wishes to apply data to a field containing an N/A, the carrier should enter ~~as~~ a footnote to the field, the amount(s) and an explanation. All other fields must be populated. If there are no data applicable to an open field enter zero.

D. Rounding Conventions

1. As specified in the accompanying Report Definition, all monetary figures must be rounded to the nearest thousand dollars.

2. All minutes of use (MOU) data to be provided in the Demand Analysis Table must be rounded to the nearest thousand.

3. All access line data (Single Line Business CPT, Residence CPT Lifeline, etc.) to be provided in the Demand Analysis Table must be provided to the nearest whole number.

4. All rate of return and other percentage amounts (Rate of Return, Rate of Return including Refund and Tax Rate) must be entered in percent and must be rounded to 2 places. Example: 12 2/3 percent should be entered as 12.67

5. The Rate of Return Multiplicative Factor must be rounded to four decimal places.

   Example: 4.0000, or 1.3333, or .6667

E. Page Layouts

The paper report will consist of the following pages, in order:

	Illustrated on Page
Table I Pages 1.1 through 1.7	*
Table I Pages 2.1 through 2.7	*
Table I Pages 3.1 through 3.7	*
Table II Page 1	5 of 24
Table III Page 1.3	6 of 24
Table III Page 2.3	7 of 24
Table III Page 3.3	8 of 24
The Confidential Treatment Table (at least one page and as many pages as needed).	1 of 6
The Footnote Table (at least one page and as many pages as needed).	2 of 6
The Erratum Table (for submission number 2 or higher, as many pages as needed).	3 of 6
The Certification Page	24 of 24

* THE LAYOUT FOR THESE PAGES IS ILLUSTRATED IN THE PAPER SPECIFICATIONS IN OUR AUGUST 29, 1989 QUARTERLY REPORT ORDER.

CERTIFICATION

I certify that I am an officer of _____; that I have examined the foregoing report and that to the best of my knowledge, information, and belief, all statements of fact contained in this report are true and that said report is an accurate statement of the affairs of the above named respondent in respect to the data set forth herein for the period from _____ to _____.

PRINTED NAME _____

POSITION _____

SIGNATURE _____

DATE _____

(Persons making willful false statements in this report form can be punished by fine or imprisonment under the Communications Act, 47 U.S.C. 220(e).)

CONTACT PERSON _____

TELEPHONE NUMBER _____

DIVESTED BOC INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Ameritech					AMTR
		1. Illinois Bell		- Illinois	LBIL
		2. Indiana Bell		- Indiana	NBIN
		3. Michigan Bell		- Michigan	MBMI
		4. Ohio Bell		- Ohio	OBOH
		5. Wisconsin Bell		- Wisconsin	WTWI
Bell Atlantic					BATR
	1.	the Chesapeake and Potomac telephone companies			CPTC
		1. C&P (D.C.)		- Dist. of Columbia	CDDC
		2. C&P of Maryland		- Maryland	CMMD
		3. C&P of Virginia		- Virginia	CVVA
		4. C&P of West Virginia		- West Virginia	CWWV
	2.	Bell of PA and Diamond State			PDTC
		1. Diamond State Telephone		- Delaware	DSDE
		2. Bell of Pennsylvania		- Pennsylvania	PAPA
	3.	New Jersey Bell			
		1. New Jersey Bell		- New Jersey	NJNJ
Bell South					BSTR
		1. Southern Bell			SBTC
				- Florida	SBFL
				- Georgia	SBGA
				- North Carolina	SBNC
				- South Carolina	SBSC
		2. South Central Bell			SCTC
				- Alabama	SCAL
				- Kentucky	SCKY
				- Louisiana	SCLA
				- Mississippi	SCMS
				- Tennessee	SCTN
NYNEX					NXTR
		1. New England Telephone			NETC
				- Maine	NEME
				- Massachusetts	NEMA
				- New Hampshire	NENH
				- Rhode Island	NERI
				- Vermont	NEVT
		2. New York Telephone		- New York	NYNY
Pacific Telesis					PTTR
		1. Pacific Bell		- California	PTCA
		2. Nevada Bell		- Nevada	PTNV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Southwestern Bell Telephone Company					SWTR
				- Arkansas	SWAR
				- Kansas	SWKS
				- Missouri	SWMO
				- Oklahoma	SWOK
				- Texas	SWTX
			all except	Kansas	SWAG
U.S. West					USTR
		1. Mountain Bell			MSTC
				- Arizona	MSAZ
				- Colorado	MSCO
				- Idaho	MSID
				- Montana	MSMT
				- New Mexico	MSNM
				- Utah	MSUT
				- Wyoming	MSWY
		2. Northwestern Bell			NWTC
				- Iowa	NWIA
				- Minnesota	NWMN
				- Nebraska	NWNE
				- North Dakota	NWND
				- South Dakota	NWSD
		3. Pacific Northwest Bell			PNTC
				- Idaho	PNID
				- Oregon	PNOR
				- Washington	PNWA
Total Divested Bell Operating Companies					TBOC

INDEPENDENT COMPANY INDEX

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
Alascom, Inc.				- Alaska	AKAK
Central Telephone Company					CETC
		1. of Florida		- Florida	CEFL
		2. of Illinois		- Illinois	CEIL
		3. of Nevada		- Nevada	CENV
		4. of Virginia		- Virginia	CEVA
Cincinnati Bell Telephone		- Ohio & Kentucky			CBTC
Continental Telephone Company					COTC
		1. Contel of California		- California	COCA
		2. Contel of Illinois		- Illinois	COIL
		3. Contel of Missouri		- Missouri	COMO
		4. Contel of New York		- New York	CONY
		5. Contel of Texas		- Texas	COTX
		6. Contel of Virginia		- Virginia	COVA
GTE Telephone Operating Companies					GTTC
		1. GTE California Inc.		- California	GTCA
		2. GTE Florida Inc.		- Florida	GTFL
		3. GTE Northwest Inc.			GTNW
			- Idaho & Montana		GTNA
				- Idaho	GTID
				- Montana	GTMT
			- OR, WA & Wstn CA		GTNB
				- Oregon	GTOR
				- Washington	GTWA
				- West Coast CA	GNCA
		4. GTE South Inc.			GTSO
				- Alabama	GTAL
				- Georgia	GTGA
				- Kentucky	GTKY
				- North Carolina	GTNC
				- South Carolina	GTSC
				- Tennessee	GTTN
				- Virginia	GTVA
				- West Virginia	GTWV

Holding Company	Combined Operating Companies	Operating Company	Combined Study Areas	Study Area	COSA Code
		5. GTE Southwest Inc.			GTSW
				- Arkansas	GTAR
				- New Mexico	GTNM
				- Oklahoma	GTOK
				- Texas	GTTX
		6. GTE North Inc.			GTMW
				- Illinois	GTIL
				- Indiana	GTIN
				- Iowa	GTIA
				- Michigan	GTMI
				- Minnesota	GTMN
				- Missouri	GTMO
				- Nebraska (also serving Kansas)	GTNE
				- Ohio	GTOH
				- Pennsylvania	GTPA
				- Wisconsin	GTWI
		7. GTE Hawaiian Tel. Co. Inc.		- Hawaii	GTHI
Lincoln Telephone Company				- Nebraska	LTNE
Puerto Rico Telephone Company				- Puerto Rico	PRPR
Rochester Telephone Corporation				- New York	RTNY
Southern New England Telephone				- Connecticut	SNCT
United Telephone System					UTTC
		1. United Tel. Co. of Florida		- Florida	UTFL
		2. United Tel. Co. of Indiana		- Indiana	UTIN
		3. United Tel. Co. of Missouri		- Missouri	UTMO
		4. Carolina Tel. and Tel. Co.		- North Carolina	UTNC
		5. United Tel. Co. of Ohio		- Ohio	UTOH
		6. United Tel. Co. of Penn.		- Pennsylvania	UTPA
		7. United Inter-Mountain Tel. Co.		- Tennessee	UTIM
				- Virginia	UTTN
					UTVA
Total Independent Companies					TICO
AT&T Communications					ATTC
Total Industry					TOTL

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